The Central Law Journal.

ST. LOUIS, JULY 11, 1890.

THE announcement of the death of Hon. Geo. W. McCrary comes as a personal affliction to the many members of the bar and of the courts who knew him and admired his sterling character and great worth. For years as judge of this federal circuit he administered the law with that modesty which accompanies innate genius, and yet with an ability and wisdom rarely given to men. In point of life and character he was certainly as unimpeachable as any man we ever knew, and every member of the bar who practiced before him will testify to his gentleness and manly qualities. Though but fifty-five years of age he had already achieved for himself a name and fame which comes of duty well performed.

THE case of Seaver v. Adams reported on page 23 of this issue, will be found of novel interest, in the modern law of married women. The right of a wife to sue another woman in damages for the seduction of her husband is certainly new, and yet not without reason, under many of the recent enactments as to married women. Actions for the loss of the society of the husband have been repeatedly upheld as will be seen in the note to Duffies v. Duffies, reported in full on page 29 of this issue. But this is the first case, so far as we can find, where the action for seduction of the husband has been maintained.

THE decision, by the United States Supreme Court, of the "Mormon church case" has unreasonably prompted many, who are ignorant of its scope and effect, to herald it as a blow at freedom of religious worship and opinion, and a subversion of constitutional rights. Nothing, in our opinion, could be further from the truth. There was in the case no question as to religious worship or opinion. The legal questions involved were simply: 1st. As to the power of congress to repeal the charter of the church of Jesus Christ of Latter Day Saints. 2d. As to the power of congress and the courts to seize the property of that corporation. The case grew out of the passage by congress of the Edmund's anti-polygamy law, which, among other things, dissolved the Mormon church corporation, annulled its charter, and directed the appointment of a receiver to wind up its property, and escheated to the United States all its real estate, except that held and used for religious worship. It was argued on behalf of the Mormon church that congress, by the dissolution of the church corporation, had assumed judicial power, and that the act of the legislature of Utah incorporating the church constituted a contract which could not be impaired by congress. The opinion of the court shows very clearly the untenable character of this position. In the first place, the power of congress over acts of a territorial legislature has been repeatedly laid down. This power is general and plenary, arising from and incidental to the right to acquire the territory itself, and from the power given by the constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States. It would be absurd to hold that the United States has power to acquire territory, and no power to govern it when acquired. Like any other act of the territorial legislature the charter in question was subject to revocation and repeal by congress whenever it should see fit to exercise its power for that purpose. That congress having dissolved the corporation, had the power to seize its property, is also clear, not only from the inherent power of congress in the premises, but also from the ancient and established rule that, when a corporation is dissolved, its personal property, ceases to be the subject of private ownership, and becomes subject to the disposal of the sovereign authority, while its real estate reverts or escheats to the grantor or donor, which in this case is the United States. As a matter of fact, the justification for this seizure by congress was the constant disregard and defiance of the law by the practice and teaching of polygamy by the church, but so far as we can see, the legal justification would have been as tenable if placed on the ground of acquisition of real estate, by the Mormon church for other than religious worship, of an amount exceeding in value that permitted to it. It must be borne in mind that the court was not passing upon the expediency or necessity of the act providing for the forfeiture, and that the only question they were called upon

to consider was as to the constitutional power of congress to pass it. Nor were they in this suit called upon to declare what disposition should be made of the property. Later judicial investigation will determine whether the real estate of the corporation which has been seized, has or has not escheated or become forfeited to the United States. The dissenting opinion of Chief Justice Fuller, concurred in by Mr. Justices Field and Lamar, in no respect weakens the force of the majority opinion.

NOTES OF RECENT DECISIONS.

RESIDENCE—LIMITATION OF ACTIONS.—The recent case, in the Supreme Court of the United States, of Penfield v. Chesapeake, O. & S. W. R. R. Co., 10 S. C. Rep. 566 is of interest on the question of who are "residents" within the meaning of that term in a statute of limitations. It was there held that one who retains his residence in another State for purposes of business is not rendered a resident of New York within the meaning of Code Civil Proc. N. Y. § 390, which provides that, where a cause of action accrues against a non-resident, an action cannot be brought thereon in the State after the expiration of the time limited by the laws of his residence, except, *inter alia*, "where, before the expiration of the time so limited, the person in whose favor it originally accrued was or became a resident of the State," by the fact that his wife and family make their home in New York with his consent. Mr. Justice Harlan after citing *In re* Thompson, 1 Wend. 43; Frost v. Brisbin, 19 Wend. 11; Haggart v. Morgan, 5 N. Y. 422; Wietkamp v. Loehr, 53 N. Y. Super. Ct. 83, says:

These cases show that, within the meaning of the statutes regulating attachments against the property of debtors, as well as those regulating arrests on civil process for debts, it was the actual residence of the defendant, and not his domicile, that determined the rights of the parties.

A like construction appears to have been given or assumed by the courts of New York in regard to similar words in that clause of its statute of limitations which provides that if, after the cause of action shall have accrued, the defendant shall "depart from, and reside out of, the State, the time of his absence" shall not be included in the period of limitation. The supreme court of the State, discussing that provision, said: "The expressions 'and reside out of the State,' and 'the time of his absence,' have the same meaning. They are correlative expressions. So that, while the defendant in this case resided out of, he was absent from, the State, and, accordingly, until he again became a resident of the State, the suspension of the operation of the statute continued." Burroughs v Bloomer, 5 Denio, 532, 535. It was held in that case, as well as in two later and well-considered opinions, the one of the superior court of New York, delivered by Mr. Justice Duer, and the other of the court of appeals, delivered by Judge Selden, that where a defendant, after the cause of action accrued against him, departed from, and resided out of, the State, several times, returning to the State in the intervening periods, all the times of absence or non-residence were to be added together, and deducted from the term of limitation. Ford v. Babcock, 2 Sandf. 518, 527, 531. Cole v. Jessup, 10 N. Y. 96, 104, 107. In each of those three cases, it was not alleged or contended, and could not be inferred from any language in the pleadings or in the opinion, that the defendant changed his domicile upon each departure and return. To the same effect is Satterthwaite v. Abercrombie, 23 Blatchf. 308, 24 Fed. Rep. 543. And in a very recent case the court of appeals said: "The law gives a creditor six years' continued presence of his debtor within the State after the cause of action has accrued." Engel v. Fischer, 102 N. Y. 400, 404, 7 N. E. Rep. 300.

To give a different meaning to the word "residence," or "resident," or "reside," in that clause of the New York statute of limitations which relates to plaintiffs, from that which the courts of the State have given it in that clause of the same statute which relates to defendants, as well as in various statutes of the State on other subjects, would produce much confusion.

Assuming without deciding, that the testimony introduced for the plaintiff in the present case would warrant the impression that he had obtained a domicile in the State of New York by virtue of his wife and family, with his consent, having made their home in that State, there is nothing in the evidence which had the slightest tendency to show that his own actual residence was in the State of New York for many years prior to his going there from St. Louis in December, 1883.

To illustrate by reffering to other statutes, let us suppose that the plaintiff, while engaged in business in St. Louis, had brought this action in the Supreme Court of New York, immediately after his family took up their residence in Brooklyn. Could he not have been compelled to give security for costs, under § 3268 of the Code of Civil Procedure, which declares that "the defendant, in an action brought in a court of record, may require security for costs to be given * * * where the plaintiff was, when the action was commenced either a person residing within the State." Or, if the defendant in this action had, within the same period, brought in one of the courts of New York a suit against the present plaintiff upon a cause of action for an "injury to personal property in consequence of negligence" it could not be doubted, in view of the decisions heretofore cited, that an attachment could have been sued out and sustained under § 635 and 636 of the Code, which provide that a warrant of attachment against the property of one or more defendants in such an action may be granted upon the application of the plaintiff, where it appears by affidavit "that the defendant is * * * * not a resident of the State." Could Penfield, in the last case supposed, have been deemed a non-resident of New York when sued for "an injury to personal prop-

erty in consequence of negligence," and under the same facts be regarded as a resident of New York if he sued the same party "for a personal injury resulting from negligence?" Could he be deemed a resident of the State, for the purpose of bringing this action, immediately after his family reach Brooklyn, and a non-resident if the railroad company had at the same time sued him in New York, and taken out an attachment against his property? The answer to these questions suggests that, in view of the course of decisions in New York, the plaintiff, by retaining his residence for purposes of business in St. Louis, did not become a resident of New York, within the meaning of section 390, untill he changed his actual residence to that State. If he had, before the expiration of the period limited by the law of Tenness e, quitted his residence in Missouri, and joined his family in New York, for the purpose of making the latter State his residence in fact, he would have been entitled to bring his action within the period fixed by the laws of New York for the commencement of action like this by one who is a resident of that State when the cause of action accrues.

SEDUCTION OF HUSBAND—ACTION BY WIFE.—The modern law of married women has seldom received as liberal a construction as in the case of Seaver v. Adams, 19 Atl. Rep. 776, decided by the Supreme Court of New Hampshire, where it was held that, under Gen. Laws N. H. 1878, ch. 183, § 12, as amended by Laws 1879, ch. 57, providing that a married woman may sue and be sued in all matters in law and equity for any wrong done her, a wife may sue another woman for seducing her husband. Blodgett, J. says:

It is not open to question that the tendency of legislation in this State for many years has been to put the husband and wife upon an exact equality before the law. As the result of this tendency, succesive statutory enactments have been adopted, by force of which the common law of servitude in marriage has been repealed, and by force of which, also, it is believed, husband and wife now stand upon an equality of right in respect to property, torts, and contracts, subject only to the exceptions in Gen. Laws, ch. 183, § 12, limiting the liability of the wife upon certain contracts and conveyances therein specified. Rev. St. ch. 149, § 1; Laws 1845, ch. 236; 1846, ch. 327; 1857, ch. 1960; 1858, ch. 2073; 1860, ch. 2342; 1865, ch. 4080; 1869, ch. 35; 1871, ch. 27; 1876, ch, 32; 1877, ch. 22; 1879, ch. 57, § 27; 1887, chs. 24, 100, 103; Hall v. Young, 37 N. H, 134; Albin v. Lord, 39 N. H. 196; Bank v. Clark, 46 N. H. 134; Whidden v. Coleman, 47 N. H. 297; Houston v. Clark, 50 N. H. 479; Cooper v. Alger, 51 N. H. 172; Alexanders v. Goodwin, 54 N. H. 423; Clough v. Russell, 55 N. H. 279; Stratton v. Stratton, 58 N. H. 473; Babbitt v. Morrison, *Id.* 419; Harris v. Webster, *Id.* 481; Plummer v. Ossipee, 59 N. H. 55; Laton v. Balcom, 64 N. H. 92, 95, 6 Atl. Rep. 37. An examination of these decisions, which contain so full a discussion of the respective legal rights of husband and wife as to render further discussion unnecessary and useless, will show that the judicial tendency is in the same direction as the legislative; and, as in natural justice no reason exists why the right of the wife to maintain an action against the seductress of her husband should not be co-extensive with his right of action against her seducer, nothing but imperative necessity would justify a decision to the contrary. But, happily, we do not find even a plausible reason in its support. The language of the statute is quite too sweeping and explicit to admit of its limitation to the defendant's construction, that it merely enables a married woman to c ontrol and protect her own property, and so relieves her from her common law disability that she may contract and sue and be sued in reference to it; for, while it does this, the statute also, and in express terms, confers upon her the right to sue and be sued in all matters in law and equity, whether of tort or of contract. And, the legislative intent to this effect being plainer, if possible, than the language of its expression, and as the only reason why the wife formerly could not maintain an action for the alienation of her husband's affections was the barbarous common-law fiction that her legal existence became suspended during the marriage, and merged into his, which long since ceased to obtain in this jurisdiction, there remains now not the semblance of a reason, in principle, why such an action may not be maintained here; and the weight of authority, also, is that the wife can maintain such an action when there is a statute enabling her to sue. Westlake v. Westlake, 34 Ohio St. 621; Jaynes v. Jaynes, 39 Hun, 40; Bennett v. Bennett, 41 Hun, 640; Warner v. Miller, 17 Abb. N. C. 221; Churchill v. Lewis, *Id.* 227; Simmons v. Simmons, 4 N. Y. Supp. 221; Mehroff v. Mehrhoff, 26 Fed. Rep. 13. So, too, say the modern text-books. "To entice away or corrupt the mind and affection of one's consort is a civil wrong for which the offender is liable to the injured husband or wife. * * * The gist of the action, however, is not the loss of assistance, but the loss of the *consortium* of the wife or husband, under which term is usually included the person's affection, society, or aid." Bigelow, Torts, 153. "We see no reason why such an action should not be supported, where, by statute, the wife is allowed, for her own benefit, to sue for personal wrongs suffered by her." Cooley, Torts, 228, note.

BANKS—CERTIFIED CHECK—PAYMENT—NOVATION.—An interesting question in the law of banking and of certified checks came before the Supreme Court of Indiana, in Borne v. First National Bank, 24 N. E. Rep. 173. There it was held that one taking a certified check in the ordinary course of business does not assume the risk of the solvency of the bank upon which it is drawn, and there is no release of the drawer in the absence of an express or implied agreement to that effect Elliott, J. says

We agree with the appellant's counsel that the drawer of a check is released if the holder, instead of presenting it for payment himself, procures it to be certified by the bank upon which it is drawn. If the holder elects to procure the certification of the check, it becomes in his hands, substantially, a certificate of deposit. By his own act he makes the bank his debtor, and releases the drawer of the check. The reason for this rule is that the moment the check is certified the funds cease to be under the control of the original depositor, and pass under the control of the person who procures the certification of the check drawn in his

favor. Bank v. Leach, 52 N. Y. 350; Thompson v. Bank, 82 N. Y. 1; Girard Bank v. Bank of Penn. Tp. 39 Pa. St. 92 Freund v. Bank, 76 N. Y. 352. It is true that the bank by which the check is certified becomes bound for its payment, and that it cannot defeat the right of the holder upon the ground that the drawer has no funds on deposit. Espy v. Bank, 18 Wall. 621. But it is very clear that the authorities to which we have referred do not directly rule this case, for here the holder did not procure the certification of the check. All that it did was to accept the check in the ordinary course of business. Nor do we regard this case as within the sweep of the reasoning of the courts in the cases to which reference has been made. Here the holder accepted the check as it was offered, and did nothing to make the drawee its debtor. The principle which gives force and strength to the decisions referred to fails entirely where there is no act done by the holder of the check save that of receiving it in the form in which it is presented; for the element which sustains those decisions is that the holder, by procuring the certification of the check after he becomes the owner, voluntarily makes the bank upon which it is drawn his debtor, thus releasing the drawer. It is, in such a case, the holder's own act that changes the relation and situation of the parties. The certification of a check does not completely change its character. On the contrary, it changes it only in one particular, although the change, it is true, does produce a difference in the relation of the original parties, inasmuch as the drawee ceases to be the debtor of the drawer for the amount represented by the check. But this is the extent of the change in the situation of the respective parties in all cases where the certification is not procured by the holder of the check after it passes into his hands. It remains an order for the payment of money; and the certification, when made before delivery, operates in favor of third parties simply as an assurance that it is genuine, and will be paid. The bank that certifies it becomes bound; but beyond this nothing is added to the legal force or effect of the instrument, except, as we have said, in cases where the holder himself procures its certification. The party who accepts a certified check in the usual course of business is not bound to take the risk of the solvency of the bank upon which it is drawn. He is bound only to do what the law requires, and that is to promptly and seasonably present the check for payment. A party to whom a debt is owing has a right to demand payment of his claim in money; for, in the absence of an express agreement, payment can only be made in money. Hancock v. Yaden, 23 N. E. Rep. 253. In accepting a check instead of money the creditor dispenses with the necessity of payment in the legal mode, and the reasonable implication is that the check shall be a payment only in the event that it is honored on presentation. To hold otherwise would, as the Supreme Court of the United States has suggested, seriously interfere with commercial and financial transactions, and break down an established system. Merchants' Bank v. State Bank, 10 Wall. 648. Nor is there any rule of law which requires it to be so held. The analogies are, indeed, the other way; for, as only money is payment where there is no express agreement, there is no sufficient reason for inferring that an order for money, although accepted, is money, or has the same effect as money. A bank upon which a check is drawn is not liable upon the check unless it is certified as good. Harrison v. Wright, 100 Ind. 515. The certification fixes the liability of the bank, but it does no more. It does not change the situation of the party who takes the check, nor does it make the check money. As it is not money, but is simply an accepted order for money, it does not, of its own force and vigor, operate as money. It cannot take the place of money without an express agreement to that effect, and therefore cannot, by its own instrinsic force, operate as payment. To make it a payment, something must be added; and that something must be an agreement, express or implied, that it shall be regarded as money, the legal medium of payment.

The obvious purpose of certifying checks is to assure the persons to whom they are offered that they are genuine, and will be paid, and that the bank that certifies them is solvent. There is nothing in the nature of the transaction that suggests in the faintest degree that certification is evidence of the solvency and ability of the drawee. It is perfectly clear that the certification of a check means simply that the bank upon which it is drawn will honor it, and there is no reason for implying that one who receives it in the usual course of business does so upon the faith that the certification implies that the bank is both willing and able to pay it. The certification is not intended to convey information as to the solvency of the bank, —none of the parties can be regarded as giving it that force; and if not, then it cannot be inferred that any of them agreed that the certification of the check impressed it with the character of money. We suppose that no one who accepts a certified check gives a thought to the question of the solvency of the bank upon which it is drawn other than such as he would give if there were no certification; for it would be unnatural and unreasonable to do so, inasmuch as the certification is, in terms and in implication, no more than an agrement that the check will be paid on presentation. It neither represents nor touches the question of the solvency of the bank upon which it is drawn. There is, therefore, no just reason for concluding that the party who takes a certified check, in the ordinary course of business, assumes the risk of the solvency of the bank chosen by the drawer of the check as his place of deposit. The fair and reasonable implication is that the party who selects for himself the bank which he will trust with his money assumes the risk of its solvency. The certification of the check is not intended to convey to the person to whom it is offered an assurance that the bank upon which it is drawn is solvent; for there is nothing in the nature of the transaction, nor in the form of the contract, which authorizes the inference that any of the parties expected or intended that it should have that effect. It cannot, therefore, be implied that the acceptance of the check by the creditor, *ipso facto*, released the drawer, and imposed upon the creditor the risk of the solvency of the bank by which the check was certified. It is, and long has been, settled law that an ordinary check does not constitute payment. This doctrine is so well settled that it is unnecessary to refer to the authorities. Accepting, as we must, this rule as obligatory, we cannot conclude that a certified check constitutes payment unless we assume that the certification makes it the equivalent of money as a medium of payment. But neither in principle nor authority is there to be found warrant for this assumption; for, as we have seen, the nature of a check is not changed by certification except in the one particular already indicated. As there is no other change, it is logically impossible that the effect of that change can make the check the equivalent of money. From whatever point of view the question is examined, it appears clear that there is no release of

the drawer of the check unless there is either an express or an implied agreement to that effect.

There is scant authority upon the direct question. The reason for this barrenness is that the use of certified checks is of modern origin. But, scarce as the authorities are, our conclusion that a certified check does not, of its own force and vigor, operate as a payment, is not without support from the decided cases. In Bickford v. Bank, 42 Ill. 238, it was expressly decided that a certified check does not constitute payment. To the same effect are the decisions of Rounds v. Smith, 42 Ill. 245; Brown v. Leckie, 43 Ill. 497; Bank v. Rotge, 28 La. Ann. 933; Andrews v. Bank, 9 Heisk. 211. The question received consideration in the recent case of Larsen v. Breene, 21 Pac. Rep. 498, and it was held that a certified check was not a payment. This general doctrine is asserted by Mr. Tiedeman, who says: "And the same rule applies although the check had been certified before its delivery to the payee or holder; the certification only having the effect, in that case, of increasing its currency, by adding the liability of the bank to that of the drawer." Tied. Com. Paper, § 456.

NON-TAXABLE INSTITUTIONS.

1. Scope of The Article.
2. Statement of the Rule.
3. Educational.
4. Temporary Use for Other Purposes.
5. Partly Used for Other Purposes.
6. Private and Public School Property.
7. Religious—Private and Public.
8. Parsonages.
9. Masonic Lodges.
10. Right of Exemption is Personal.

1. *Scope of the Article.*—In treating of exemptions from taxation, the subject of special assessments will not be considered. It may be said however that special taxation and special assessments apply to all property not specifically exempt therefrom by the law, except that belonging to the State and the United States government. The State may even authorize a burden to be imposed on one of its agencies to the extent it is benefited by another of its agencies for the benefit of the entire public. This principle is the basis of special taxation and special assessment. Thus, the Illinois law[1] which exempts from taxation all public buildings belonging to any county, does not apply to a special tax levied by a city upon a county court-house to defray the cost of paving the street in front of such building.[2] So this law does not apply to special assessments, and therefore a county court-house is liable to special assessments for paving the streets adjacent.[3] The scope of this article is to embrace a discussion of exemptions from taxation as applied to educational, religious and similar institutions; such exemption being authorized by the constitutions of the States. When the word taxation is used, it is to be understood in its general sense as interpreted by the courts, when found in the constitutions and in the statutes, relative to exemptions.

2. *Statement of the Rule.*—The general rule is that property used for educational and religious purposes, in order to receive the benefit of exemption from general taxation, must be devoted exclusively to the uses and purposes expressed by the law. The provisions of the constitutions and the statutes generally contain a proviso that the property must be used exclusively for the purposes designated in order to receive the benefit of exemption from taxation. If used for other purposes, it then becomes liable to taxation, although the proceeds are to be applied for the promotion of the institution.[4] But in Massachusetts it is held that such exempt property, in absence of anything to show abuse, includes that real estate occupied by the corporation for its officers, and appropriated to those uses by its officers.[5]

3. *Educational.*—The buildings cannot be used for purposes not expressed in the law. Thus, a building erected as a college, the lower story being designated solely for rent for business purposes. and is so used, cannot be exempted from taxation, because there is no such provision in the law. This rule holds good though the rent of the building is used for educational purposes, in promoting the interests of the college.[6] If the law makes other provisions, such as permitting the institution to lease its lands and lots, so

[1] Rev. St., ch. 120, § 2.

[2] Adams County v. City of Quincy, 22 N. E. Rep. 624.

[3] McLean County v. City of Bloomington, 106 Ill. 209.

[4] Cincinnati College v. State, 19 Ohio, 110; Trustees v. Exeter, 58 N. H. 306; Old South Society v. Boston, 127 Mass. 378; Orr v. Baker, 4 Ind. 86; Trustees v. Ellis, 38 Ind. 3; Connecticut, etc. Assn. v. East Lyme, 54 Conn. 152; State v. Board, 34 La. Ann. 668; State v. Board, 34 La. Ann. 574; Blackman v. Houston, 29 La. Ann. 592; Washburne College v. Shawnee County, 8 Kan. 344; St. Mary's College v. Crawl, 10 Kan. 442; Morris v. Lone Star Chapter, 68 Tex. 698; First M. E. Church v. Chicago, 26 Ill. 482; Wyman v. City of St. Louis, 17 Mo. 335.

[5] Mass. Gen. Hospital v. Sommerville, 101 Mass. 319; and See Monticello Seminary v. People, 106 Ill. 398.

[6] Cincinnati College v. State, 19 Ohio, 110.

as to have an income for its support, it will be a valid exercise of its power to handle the real estate in conformity with the statute. A university was incorporated in 1851, in Illinois. It was authorized to purchase and to hold real estate to the extent of two thousand acres, and to receive gifts and devises of land above that amount. Its powers were enlarged in 1855, and it was provided "that all property, of whatever kind or description, belonging to or owned by said corporation, shall be forever free from taxation for any and all purposes." This law was enacted under the Illinois constitution of 1848, which declares that "the property of the State and counties, both real and personal, and such other property as the general assembly may deem necessary for school, religious, and charitable purposes may be exempted from taxation." The Illinois constitution of 1870 provides an exemption of property "used exclusively" for school purposes. The property of the university, which was leased was taxed, and the university contested the right to levy taxes on such property. The State court held that the legislature could not exempt from taxation under the constitution of 1848, property owned by educational corporations, which was not used directly in aid of purposes for which such corporations were created.[7] This case then went to the United States Supreme Court on writ of error. It was held by this court that the exemption from taxation granted to corporations by special charter, under the Illinois constitution of 1848,[8] constitutes a contract which cannot, under the United States constitution, be impaired by a later State constitution or statute. The action of the university in leasing its lots and lands to different parties for a longer or shorter period, the income being used to promote the interests of the corporation, was a proper exercise of its authority under its charter and laws of Illinois, thus overruling the State decision.[9]

4. *Temporary Use for Other Purposes.*—Under the New York statute,[10] leasing a school building during the summer vacation, for a boarding-house, will not forfeit or waive the exemption given. The court says: "The policy of the exemption is the encouragement of learning. This policy is not subverted, but on the contrary is promoted by permitting the plaintiff to devote the premises to a profitable use during the summer months when they are not needed and cannot be used for the purposes of a school. If the premises should be left wholly vacant during this time, it is not pretended that the property could be taxed. By leasing the premises during the summer the corporation is enabled to increase its income applicable to the purposes of its creation. If the exemption from taxation enables it to obtain a larger net rental than could be obtained from ordinary property, it is an advantage to which it is entitled, and is consistent with the policy upon which the exemption is based."[11] In this case the use of the building for school purposes was not abandoned. Such an interruption of the use was not an abandonment by any means. For this reason, this case is not antagonistic to the general rule, which applies where the property sought to be exempted had been devoted permanently, in whole or in part, to a different use than the one which the statute exempts.

5. *Partly Used for Other Purposes.*—Many courts hold that if any part of the property exempt is devoted to other purposes, then it all becomes taxable, though such income is used for the support of the institution.[12] Thus, a building used as a family residence, is not one used exclusively for school purposes, and therefore is not exempted by the constitution.[13] Property permanently used for the purposes designated is exempt from taxation. But when a portion of such property is used to derive an income or profit, some courts hold that such property shall be taxed to that extent. The general tenor of authority seems to be that in such instances, though the whole property becomes taxable, there may be due apportionment of values in the assessment, so as to confine the exemption to so much of the value as the privileged part of the premises represents.[14]

[7] Northwestern University v. People, 80 Ill. 333; 86 Ill. 141.

[8] Art. 9, § 3.

[9] University v. People, 99 U. S. 309.

[10] 1 Rev. St. 388, § 4, subd. 3.

[11] Table Grove Seminary v. Cramer, 98 N. Y. 121.

[12] Wyman v. St. Louis, 17 Mo. 335.

[13] Red v. Johnson, 53 Tex. 284; St. Mary's College v. Crawl, 10 Kan. 451; Morris v. Masons, 68 Tex. 698; Contra: Blackman v. Houston, 37 La. Ann. 592.

[14] State v. Board, 34 La. Ann. 574; Massenbury v.

6. *Private and Public School Property.*—The law does not generally exempt the property of private schools from taxation. In New York the statute exempting school houses and other buildings erected for the use of a college, incorporated academy or other seminary of learning, does not apply to a building used and occupied as a private boarding school. School houses referred to in the statute are those used for the public common schools.[15] In Michigan the law exempts the real estate of scientific institutions, which is occupied for the purposes for which the institutions were incorporated.[16] So a school incorporated under an act "to establish, and conduct a seminary of learning," whose expenses are met by the tuition charges, cannot be taxed on its real estate which is occupied by its school buildings.[17] The Ohio constitution uses the expressions "public school-house" and "institutions of purely public charity." The statute exempts from taxation "all public school-houses, all public colleges, public academies, all buildings connected with the same, and all lands connected with public institutions of learning, not used with a view of profit." Under this statute it was held that the parochial schools with their play grounds were exempt from taxation; that while they were not "public school houses," yet they were "institutions of purely public charity," within the meaning of the constitution.[18] In Illinois the law exempting all property of institutions of learning, including the real estate on which the institutions are situated, from taxation, does not apply to property owned by an individual who conducts the school for profit. One of the conditions of exemption from taxation is that the property connected with the institution of learning, must be the property of the institution. If owned by private parties, they have a perfect right to stop the school at any time. Such property cannot be the subject of trust which the courts could recognize at the instance of the public or of any supposed beneficiary, either natural or artificial. Such property must be subject to taxation.[19] But where a seminary is created by special charter, and the real estate is the property of the corporation, and used strictly in the carrying on of the seminary and exclusively for that purpose, the surplus above actual expenses being used as a fund for the education of an indigent class of persons, such property is exempt from taxation. The lawn, play grounds and woodland are exempt, provided they are all within one inclosure.[20] The Illinois State Normal University has real estate not inclosed with its buildings, which should be taxed. This university was incorporated under the constitution of 1848, but has no provisions in its charter for exemption from taxation, like those found in the charter of the Northwestern University.[21] It is not a State institution, for the Illinois Supreme Court has twice declared it to be a private corporation,[22] notwithstanding the fact that the trustees are nominated by the governor and confirmed by the State senate, and its principal support is met by the State appropriations. This is undoubtedly, the only instance of a private corporation being run by the State. Orphan asylums are not school-houses and cannot claim exemption from taxation as such, because the orphans are partially educated while in the control of the management of the asylum. The exemption of school-houses has reference to school-houses used for the common or public schools.[23]

7. *Religious—Private and Public.* — The law applicable to educational institutions as to exemption from taxation will apply to religious. The title to the property must be in the religious society as a body to entitle it to exemption. So private property used for church purposes is not exempt, though it has been dedicated. Thus, a party erected a meeting house, which was used exclusively for religious purposes, but the congregation which worshipped there was not incorporated

Grand Lodge, 81 Ga. 212; Appeal Tax Court v. Grand Lodge, 50 Md. 422; Commissioners v. Sisters of Charity, 48 Md. 34; St. Joseph's Church v. Assessors, 12 R. 1. 19; County v. Colorado Seminary (Colo.), 21 Pac. Rep. 490.

[15] Chegary v. Mayor, 13 N. Y. 220; 1 Rev. St. 388, § 4.

[16] Laws of 1885, p. 176.

[17] Detroit Home and Day School v. City of Detroit, 43 N. W. Rep. 593.

[18] Gerke v. Purcell, 25 Ohio St. 229.

[19] Montgomery v. Wyman, 22 N. E. Rep. 845; 29 Cent. L. J. 490, where this case is followed by an able annotation by S. S. Merrill.

[20] Monticello Seminary v. People, 106 Ill. 398.

[21] See People v. Cemetery Co., 86 Ill. 337.

[22] Board v. Greenbaum, 39 Ill. 609; Board v. Bakewell, 122 Ill. 339.

[23] Association v. New York, 104 N. Y. 581.

or in any manner organized. At any time the owner might have excluded the congregation. It was held that the property was not exempt from taxation, since church property to be so exempt must be owned by the congregation.[24] The statute of New York provides that the exemption from taxation of a school house or a building for public worship shall not apply to any such building in the city of New York, unless the same shall be exclusively used for such purposes, and exclusively the property of a religious society; this has reference only to an incorporated religious society, which is entitled to such exemption.[25]

8. *Parsonages.*—A parsonage belonging to a church society is not exempt from taxation. Thus, under a statute exempting "all public property, places of religious worship or burial," a parsonage in which the rector resides, and owned by a church corporation is subject to taxation.[26] So a statute exempting houses for religious worship, owned by a religious society, does not include a parsonage erected upon the church grounds, or the lands on which it is situated, although the parsonage is occupied by the pastor of the church, rent free.[27] In New Jersey, the statute exempts buildings erected and used for religious worship, and the lands whereon the same are situate. This does not include a house where the rector lives, whether on the land originally occupied only by the church, or elsewhere.[28] So, in Minnesota, where the words of the exemption clause are "all houses used exclusively for public worship," parsonages are not included.[29] In Indiana every building erected for religious worship is exempt from taxation, but this exemption does not apply to a parsonage that has been erected for the convenience and accommodation of the pastor of a church.[30]

9. *Masonic Lodges.*—Masonic lodges are generally considered as institutions of purely public charity, and so long as their property is used exclusively for the purposes set forth in the law, it is exempt from taxation. But when their real estate is rented for other purposes, then it becomes subject to taxation. Thus, in Georgia, among the institutions exempt from taxation, are "all institutions of purely public charity," and it is held in that State that if the Grand Lodge of Georgia is an institution of purely public charity, within the meaning of the constitution, its temple or lodge building, when used for corporation profit or income, is not exempt from taxation.[31] Whether masonic institutions or others which confine their benefits to members of the association, are institutions of purely, or even public, charity at all, is a question not wholly settled, and has been a matter of judicial discussion.[32] In Maine it has been held that a masonic lodge is not a purely public charity and is taxable.[33] In Texas such lodges are exempt from taxation if the property is used directly and exclusively by the institution, and are charitable in their nature. A lease of a part of their property to other parties for business, subjects not only the part leased, but the whole to taxation.[34] So in Louisiana, masonic lodges are charitable institutions and are exempt from taxation on property owned and used for their corporate purposes. But property of such institutions when leased or used for corporate income, will not be entitled to exemption from taxation.[35]

10. *Right of Exemption is Personal.*—An immunity from taxation is a personal privilege, not transferrable except with the consent or under the authority of the legislature, which granted the exemption or some succeeding legislature. Such an exemption does not necessarily attach or run with the prop-

[24] People v. Anderson, 117 Ill. 50.

[25] Act of 1852, ch. 282, § 1; Church v. Mayor, 23 N. E. Rep. 294.

[26] Church v. Mayor, 78 Ga. 541.

[27] Third Congrega. Soc. v. Springfield, 147 Mass. 398.

[28] State v. Lyon, 32 N. J. L. 360; State v. Krallman, 38 N. J. L. 117; State v. Axtell, 41 N. J. L. 117.

[29] Church v. Board, 12 Minn. 395 (Gill 280); Hennepin v. Grace, 27 Minn. 503. See also Church v. Providence, 12 R. I. 19; Gerke v. Purcell, 25 Ohio St. 229.

[30] Trustees v. Ellis, 38 Ind. 3.

[31] Massenbury v. Grand Lodge, 81 Ga. 212. This was decided under the constitution of 1877. Mayor v. Lodge, 53 Ga. 93, was decided prior to 1877. This case held that a masonic corporation was a charitable institution, and that a house belonging to it—any house—was exempt under the clause "any house belonging to any charitable institution" was exempt as stated in the law.—Mar. & C. Dig. 147.

[32] College v. Mercer Co., 101 Pa. St. 530; Institute v. Delaware Co., 94 Pa. 163; Asylum v. School District, 90 Pa. St. 21; Donahugh's Appeal, 86 Pa. St. 306; Swift v. Easton, 73 Pa. St. 362; Gerke v. Purcell, 25 Ohio St. 229; Humphries v. Little Sisters, 29 Ohio St. 201; Association v. Pelton, 36 Ohio St. 258.

[33] Bangor v. Masonic Lodge, 73 Me. 428.

[34] Morris v. Lone Star Chapter, 68 Tex. 698.

[35] State v. Board, 34 La. Ann. 574.

erty after it passess from the owner in whose favor the exemption was granted.[36] When such property is sold by the corporation, it then becomes subject to taxation in the hands of the purchaser.[37] Because it is exempt in the hands of an individual or corporation, does not make it exempt in the hands of a third party.[38] D. H. PINGREY.

[36] Morgan v. Louisiana, 93 U. S. 217; Wilson v. Gaines, 103 U. S. 417; Lord v. Litchfield, 36 Conn. 116.
[37] New Haven v. Sheffield, 30 Conn. 160.
[38] State v. Whitworth, 8 Lea (Tenn.), 594. See also People v. Bearsley, 52 Barb. (N. Y.) 205. For a treatment of "Burial Lots" see leading article in 28 Cent. L. J. 86, § 11, by Solon D. Wilson, Esq.

HUSBAND AND WIFE—LOSS OF HUSBAND'S SOCIETY—ENTICEMENT—ACTION BY WIFE.

DUFFIES V. DUFFIES.

Supreme Court of Wisconsin, April 8, 1890.

Neither at common nor by statute, in Wisconsin, can a wife maintain an action in damages against one who wrongfully and maliciously entices away her husband and thus deprives her of the latter's society and support.

ORTON, J.: This action is brought by the plaintiff, as the wife of one Frank W. Duffies, against the defendant, the mother of said Frank, to recover damages by reason of the defendant having wrongfully induced, persuaded, and caused the said Frank W. Duffies to refuse to live and cohabit with the plaintiff, and to support and maintain their child, and maliciously entice him away from her, intending thereby to deprive her of his society, and support, maintenance, aid, and assistance. The action was tried, and the plaintiff recovered, by the verdict of the jury, $2,000, of which the plaintiff remitted $1,000, and judgment was rendered for the residue thereof. Errors are assigned for admitting irrelevant testimony, refusing to submit ceatain questions to the jury, to give certain instructions, and for denying motion for nonsuit and for a new trial, but they will not be considered any further than some of them may involve the question whether the action itself will lie. The learned counsel of the appellant, before the trial was commenced, objected to the introduction of any evidence under the complaint, on the ground that it stated no cause of action, which objection was overrulled. On this demurrer, *ore tenus*, the learned counsel contended that this action would not lie at common law, and that there is no statute allowing it. From the examination of the authorities we have been able to make, and considering the reason thereof, we have concluded that such contention is correct, and that the action annot be maintained.

The learned counsel of the respondent contends that the action lies (1) at the common law; and (2) by the terms and liberal interpretation of our statutes; and (3) by analogy to similar cases. The learned counsel does not contend that any such action was ever maintained at the common law, but that by the principles of the common law, and in analogy to similar actions at the common law, the right of action existed, and was not maintainable, only on account of the wife's disability to bring the action. But the wife was not only unable to bring the action to recover damages for the loss of her husband's society, but the damages themselves were the property of the husband, the same as in case of personal injury, or for defamation, even before marriage. Gibson v. Gibson, 43 Wis. 23; Barnes v. Martin, 15 Wis. 240. How can she be said to have had a right of action to recover damages which she could neither own nor enjoy. More properly the right of action was in the husband, in the interest or on account of his wife. The common law could not recognize a right of action in the wife to sue for the loss of her husband's society, without involving the absurdity that the husband might also sue for such a cause. The wife having no right of property, at common law, in any damages recovered on her account, for any cause, neither could she have any right of action to recover them. This may have been grossly wrong, but such was the theory of the common law, and, to make it consistent, the wife had no such right of action. The wife was not only inferior to the husband, but she had no personal identity separate from her husband. It is not proper to say that the common law was inconsistent in denying to the wife the right to bring such an action, and at the same time allowing the husband to sue for the loss of the society of his wife. Her disability in this respect was consistent with all of her other disabilities.

When the learned counsel cites the case of Winsmore v. Greenbank, Willes, 581, decided in the nineteenth year of George the Third, in which the husband sued for enticing away his wife, *per quod amisit* the comfort and society of his wife, as furnishing the same reason for the wife bringing such an action, he ignores all these common-law disabilities of the wife, which are consistent with each other. Chief Justice Willes admitted that there was no precedent for such an action, but, as the action on the case had been invented for similar cases, he claimed that this was only another case with new facts, and as there were "injury and damage," and the violation of a right, and the action ought to lie, it would lie within the reason of other cases. And so the learned counsel argues from Philp v. Squire, Peake 82, in the 31st year of George the Third, in which Lord Kenyon held that the action by the husband was not for the loss of the services of the wife, but of her society.

In Pasley v. Freeman, 3 Term R. 51, the action was for making a false affirmation with intent to

defraud. Lord Kenyon held that the action would lie, although a new case, because there was *damnum cum injuria*. In Ashby v. White, 2 Ld. Raym. 938, decided in 1701, the action was against an officer for refusing to receive the plaintiff's vote. It was a case of *primæ impressionis*, but Chief Justice Holt, against the other judges, held that the action would lie at common law, on the ground that where there is a wrong there should be a remedy. In Chapman v. Pickersgill, 2 Wills. 145, the action was for falsely and maliciously suing out a bankrupt commission, and it was held that the action would lie at common law on the same ground. In Lumley v. Gye, 2 El. & Bl. 216, the action was for enticing away a singer employed to sing in a theater, and in Bowen v. Hall, 6 Q. B. Div. 333, for enticing away a common laborer employed by the plaintiff. These are all new cases predicated upon the same general principles of the common law. The argument is, if these actions can be sustained, and the action of the husband for the loss of his wife's *consortium*, why may not an action by or on behalf of the wife, for the loss of her husband's society, support, and protection, be maintained on the same principles? The reason is obvious, and suggested above. The wife had no property in the *consortium* of her husband that is lost, nor any right to it that has been violated at common law. If the same able judges who were free to invent actions, and to sustain new cases in an old action, and were quick to see the justice and humanity of all cases, could have found a right of action of the wife in such a case, we may believe that old forms and fictions would not have stood in the way. Her relative position and conditions as a wife at common law percluded the recognition of any such right of action. Under the civil law the husband and wife were distinct persons. The wife had a separate estate, the right to contract debts, and to bring actions for injuries. Her position was so nearly equal to that of her husband that her right to his society was recognized, and she had a remedy for its loss. But that remedy was confined to the ecclesiastical courts, and consisted only in having her husband returned to her. 1 Bl. Comm. 442. The wife had a right of action for defamation, by the civil law, but it was denied her in the common-law courts, because she would then have two actions or a double remedy. Palmer v. Thorpe, 4 Coke, 19; Byron v. Emes, 12 Mod. 106, 2 Salk. 694. Another reason was that an action for defamation would not lie without special damages, and the wife could have no special damages. In looking into the books of the common law, we can find no such action or right of action of the wife and they are both denied on principle as well as want of precedent. In the genial light of modern times, the true situation and position of the wife in the marriage relation are seen more clearly than formerly, and the place assigned her by the law and by common consent is much higher and more suitable to her intrinsic character, ability, and worth. She is placed on a nearer equality with her husband in her rights of person, property, and character. Under the just and genial laws of married woman, she has resumed her position of a *feme sole*, as nearly as compatible with natural law. It is not therefore, surprising that so great and gallant, learned and humane, a judge and chancellor as Lord Campbell should hold in Lynch v. Knight, 9 H. L. Cas. 577, that the wife had the same right to the *consortium* of her husband that he had to hers, and might allege special damage for its loss, caused by defamation of her character. The lord chancellor said that it was a case of first impressions, and rested his opinion upon the great changes that had taken place in the position and relations of the wife under modern legislation. The opinion is by no means positive, and placed the right on the condition that it might be shown that the wife's "loss and injury" concurred. But the opinion is *obiter* in that case, and off-hand, and can hardly be accepted as authority. But the remedy of the wife was of no use or benefit to her, for she had to join her husband in the suit, and the damages recovered belonged exclusively to him. The plaintiff obtained judgment in queen's bench in Ireland. It was affirmed in exchequer by divided court, and reversed in the house of lords, but on another question. It is, however, a decision that no such case had ever been sustained at common law.

In Westlake v. Westlake, 34 Ohio St. 621, it was held that the action would not lie at common law, and it was only allowed in Ohio by the statute that gave the wife a right of action for all violations of or injury to the wife's "personal rights." Judge Cooley said he could see "no reason why such an action might not exist, when the statute allowed her to sue for personal wrongs." Cooley, Torts, 228. "Personal rights" are not rights of person. The latter are physical, and the former are relative and general, and embrace all the rights any person may have, and all the wrongs he may suffer. The court held correctly that the right to the society of her husband was a personal right, under the statute. It was so held also in Clark v. Harlan, 1 Cin. R. 418. It is said in the opinion that the wife had no such right at common law as a personal right, and therefore she could not sue, but she may by force of the statute. But it was held in Mulford v. Clewell, 21 Ohio St. 191, that, under the statute that allowed the wife to sue for "injury to her property or person," she could not bring this action for the *consortium* of her husband, nor at any common law. In many cases, as in Ashby v. White, *supra*, it has been held that the action might be brought, because there should be no "wrong without a remedy," as Chief Justice Holt said in that case. But we must not forget that to entice away her husband was no wrong to the wife, and she had no right to his society, and the damages, if any, belonged to him at common law. In Van Arnam v. Ayers, 67 Barb. 544, it was held that the action would not lie at com-

mon law, nor under the statute, "for injury to her person and character," or her separate property. In Jaynes v. Jaynes, 39 Hun, 40, it was held that the action would lie under the statute of "civil procedure," but not at common law. In Breiman v. Paasch, 7 Abb. N. C. 249, it was held that the action would lie if not under the statute, under the authority of Lynch v. Knight, *supra*, since the wife's disability to sue alone had been removed. In Baker v. Baker, 16 Abb. N. C. 293 the right is predicated upon the wife's separate property, and the right to sue for injury to her person and character. In Logan v. Logan, 77 Ind. 559, the action by the wife was for defamation, and she counted *per quod* for loss of the society of her husband. It was held that she might bring the action under the statute, of "injury to her person or character," but it could not be extended for loss of the society of her husband. In Calloway v. Laydon, 47 Iowa, 456, an action under the liquor law like ours in chapter 127, Laws 1872, in which the wife might recover "for injury to her person, property, or means of support, and for all damages sustained, and for exemplary damages," it was held that she could not recover for the loss of her husband's society. And so in Freese v. Tripp, 70 Ill. 503, and in Confrey v. Stark, 73 Ill. 187, and Mulford v. Clewell, *supra*. The recent case of Foot v. Card, 18 Atl. Rep. 1027, (decided by the Supreme Court of Connecticut), is sustained by the authority of Lynch v. Knight, *supra*, and on the ground that the wife is in a condition of perfect equality with her husband, and "her right is the same as his in kind, degree, and value." It is said that even if the damages go to the husband, he would hold them as trustee for the wife. This case would be of greater authority if the expressions of the wife's absolute equality with her husband were less general, sweeping and unlimited. The still more recent case of Bennett v. Bennett (N. Y.), 23 N. E. Rep. 17, holds that the action will lie at common law, and cites Lynch v. Knight, *supra*, and under the statutes which allow her to recover for "injury to her person or character," and give her separate property. It is held, in the leading opinion, that the wife can sue alone for all injuries to her person, and the damages recovered will belong to her.

It will be seen that there is very little conclusive authority on this question by the decisions of the courts in this country or in England. The doctrine may be said to be unsettled. Those courts which hold that the action will lie at common law do so because the statute has placed the wife on an equality with the husband or removed her disabilities. This would seem to imply that the action would not lie at common law, but by statute. Other courts hold that the right of action existed at common law, and would therefor lie as soon as the statute removed the wife's disability to sue alone. The question may be said to be a new one in this court, although the effect of some of our decisions may have a direct bearing upon it. The case of Peterson v. Knoble, 35 Wis. 80, was an action under the liquor law, commonly called the "Graham law," to recover for injury to the "person, property, or means of support" of the wife. The husband was made drunk, and turned his wife out of doors. The question was raised whether injury to her feelings and for the indignity could be recovered in the action. The court cites Mulford v. Clewell, *supra*, as holding that nothing could be recovered, except for actual violence, or physical injury to the person or health, not even for her disgrace or loss of society of her husband, and, while approving that case, holds that for injury to the feelings, and for the indignity, she may recover, because it is a part of the actual damages in the action, and connected with the injury to her person, and because "exemplary damages" may also be recovered under the statute. This limitation to the actual damages for the physical injury would seem to imply that the loss of her husband's society could not be recovered for under the statute. The cases in Ohio and Illinois, under the same law, hold that damages for the loss of the husband's society cannot be recovered, as we have seen. The case of Dillon v. Linder, 36 Wis. 344, was brought under the same statute, (chapter 127, Laws 1872). While it was pending, and before trial, chapter 179, Laws 1874, repealing the above chapter, was passed, and the question was whether, by such repeal, the action was defeated or abated, or saved by section 33, ch. 119, Rev. St. 1858, now section 4974, Rev. St. It was held, Chief Justice Ryan writing the opinion, that the section referred to related only to "new forms of remedy for old rights," and that the statute created the cause of action itself, and that the repeal took away the right of action, and that was not saved by the statute, and was therefore gone. The important and pertinent effect of this decision is that the statute created the cause of action or the right of action to recover damages by reason of any person causing, through drunkenness of the husband, any injury to the wife's "person, property, or means of support, and any damages sustained and exemplary damages." Then it follows that such a cause of action, or right of action, did not exist at common law, but is purely statutory. If, then, such damages could not be recovered at common law, much less could a more remote and speculative class of damages, for the loss of the husband's society by such means, be recovered at common law, or without a statute creating such a cause of action or right of action. It follows, also, as before said, that the right of action of the wife, in such a case, did not exist at common law. It was not a mere common-law disability to bring the action. The only two statutes now in force in this State allowing the wife to bring an action alone, and to have the damages recovered her own separate property, are said chapter 179, Laws 1874 (section 1560, Rev. St.), which gives her an action against any person who causes, through drunken

ness of the husband, "injury to her person, property, or means of support;" and chapter 99, Laws 1881, which gives her an action for any "injury to her person or character." According to common reason and the decided weight of authority, neither of these statutes gives the wife any right of action for the *consortium* of her husband. The loss of her husband's society is not an injury to her person, property, means of support, or character, and such an action cannot be forced, within the terms or spirit of the statutes, by the most strained and liberal construction. Such a right of action does not exist by law, nor can it be inferred from the ameliorated and changed conditions of the wife, and her equality with her husband, produced by modern legislation in her behalf. Whatever equality of rights with her husband she may have, it is not proper to say that "her right to the society of her husband is the same in kind, degree, and value as his right to her society." There are natural and unchangeable conditions of husband and wife that make that right radically unequal and different. The wife is more domestic, and is supposed to have the personal care of the household, and her duties in the domestic economy require her to be more constantly at home, where the husband may nearly always expect to find her, and enjoy her society. She is purer and better by nature than her husband, and more governed by principle and a sense of duty and right, and she seldom violates her marriage obligations, or abandons her home, or denies to her husband the comforts and advantages of her society by any inducement or influence of others, without just cause. Actions against others for enticing her from her home and her husband's society are not frequent. She is protected from such wrong, not only by her integrity of character, but by greater love for her family, and the comforts and genial influences of home life. With the husband the case is different. He may not be his wife's superior in the sense of the common law, or in anything, and may be her inferior in many things, but he is charged with the duty of providing for, maintaining, and protecting his wife and family. He is engaged, for this purpose, in the business and various employments of the outside world, that must necessarily, more or less, deprive his wife of his society. The exigencies of even his legitimate business may keep him away from her and his home for months or years. He is exposed to the temptations, enticements, and allurements of the world, which easily withdraw him from her society, or cause him to desert or abandon her. Others may entice or induce him to do many things, for business or pleasure, which may deprive his wife of his society. The wife had reason to expect all these things when she entered the marriage relation, and her right to his society has all these conditions, and is not the same in "degree and value" as his right to hers. For these reasons, and many others, if actions by the husband for the loss of the society of his wife are not frequent, actions by the wife for the loss of his society would be numberless. This right of action in the wife would be the most fruitful source of litigation of any that can be thought of. The loss of his society need not be permanent, for cause of action. For a longer or shorter time, if caused by improper inducements or enticements, the right would accrue. There would seem to be very good reason why this right of action should be denied. The justice and advantages of such an action are at least doubtful. For these reasons, this action cannot be sustained on the ground of the wife's equality in right, or of a "remedy for every wrong," or of the coincidence of "injury and damage," or of the constitutional right of a remedy for "injury to person, property, or character." The right is, at least, so doubtful that the courts may well await a direct act of the legislature conferring it. There are questions of public policy and expediency involved that may well be considered by the legislature. The court should have sustained the objection of the defendant to any evidence under the complaint, on the ground that it did not state a cause of action. The judgment of the superior court is reversed, and the cause remanded, with directions to dismiss the complaint.

NOTE.—Can a wife maintain an action for damages for the loss of her husband's support, protection and society, against one who entices away her husband? This is one of the vexed questions of the law. It does not seem to have been well settled at common law, and it is not well settled under the modern statutes. If the wife had such a right at common law and her husband was merely a formal party, necessary simply to conform to the rules of pleading and because she could not sue alone, then, under statutes removing her disabilities and permitting her to sue alone, it would seem that she ought to be entitled to maintain such an action on her own account and in her own name.

It is well settled that a husband has a right to the services and society of his wife,[1] and may maintain an action in damages against one who alienates her affections and entices her away.[2] This being true, it would certainly be just and in accordance with the more liberal views of the wife's *status* and rights taken in modern times, that she also should have the right to maintain such an action. But this is not sufficient to determine the question. It may be just and at the same time it may not be the law.

Neither the text-writers nor the courts are in accord upon the subject. Mr. Schouler says: "Each spouse is entitled to the society and companionship of the other,"[3] yet, notwithstanding this statement, also

[1] Cooley on Torts, 38, 224; Schouler's Domes c Relations (4th ed.) § 41.

[2] Winsmore v. Greenbank, Willes, 577; Bigelow's Leading Case in Torts, 328, and note; 2 Addison on Torts, § 1271; Pollock on Torts, 209; Cooley on Torts, 224; Reinhart v. Bills, 85 Mo. 534; Modisett v. McPike, 74 Mo. 636; Heermance v. James, 47 Barb. 120; Hadley v. Heywood, 121, Mass. 236; Higham v. Vanosdol, 101 Ind. 160.

[3] Schouler on Husb., and Wife, § 64.

says, that "it is held that a wife cannot, either at common law, or under statutes not clearly enabling her, maintain an action against a third person for having, by wrongful acts, advise, and persuasion, induced her husband to abandon and become separate from and cease to maintain her."[4] Further than this he expresses no opinion of his own upon the subject. Mr. Addison says that, notwithstanding the maxim that "there is no wrong without a remedy," there are "many cases where persons have suffered serious injury from the acts and doings of others of which the law takes no cognizance." Among such cases he instances that of a wife whose husband has been caused to desert her by the acts and influence of another.[5] Blackstone says, in treating of the wrongs to masters by enticing away or injuring their servants, that "notice is only taken of the wrong done to the superior of the parties related, by the breach and dissolution of either the relation itself, or at least the advantages accruing therefrom; while the loss of the inferior by such injuries is totally disregarded. One reason for which may be this: that the inferior hath no kind of property in the company, care, or assistance of the superior, as the superior is held to have in those of the inferior; and therefore, the inferior can suffer no loss or injury."[6] In illustration, he states that a wife cannot recover damages from a third person for beating her husband.[7] The author of an article in the Washington *Law Reporter*, written several years ago, when but one of the modern cases upon the subject had been decided, also takes the position that the wife has no right of action for loss of her husband's society and support. After an elaborate consideration of the history of the rule permitting such an action on the part of the husband, he concludes that it is an extension of the rule allowing masters to recover where their servants were enticed away, and is based on the relation or right of superiority and control over the person enticed away. Hence, the further conclusion, that, as no such right of superiority and control is in the wife, no such right of action exists in her favor.[8] On the other hand, Judge Cooley says: "We see no reason why such an action should not be supported, where, by statute, the wife is allowed, for her own benefit, to sue for personal wrongs suffered by her."[9]

The decisions of the courts are even more conflicting than the opinions of the text-writers. Beginning with the earliest case,[10] in which the right of a wife to the *consortium* of her husband seems to have been considered, several opinions were delivered by the different members of the court, and it is somewhat difficult to determine just what the court did decide in regard to the right of a wife to maintain an action for loss of *consortium*. although a majority seemed to favor that right. In several modern cases the right is affirmed to exist as a common-law right.[11] In others it is based upon statutes removing the disabilities of married women or giving her certain additional rights.[12] On the other hand there are several cases, including the principal case, denying the right altogether.[13] Most of the cases are carefully reviewed in the opinions in the principal case, and no good could be accomplished by further reviewing them here.

Where a wife leaves her husband, without his consent, one who merely harbors her, knowing her to be the wife of another, and thereby encourages her in withholding her marital duties, will be liable to an action on the part of the husband, if the conduct of the wife is without justification.[14] As said in a recent case there may be circumstances justifying a stranger in sheltering the wife of another or carrying her beyond the reach of the latter without his consent, but "such an adventure on the part of a stranger is always attended with the peril of his being able to show to the satisfaction of a court that the safety of the wife, apparently, at least, demanded his intervention and that he acted in good faith."[15] If he acts in good faith and the wife has good cause for leaving her husband, then, of course he is not liable.[16] In the case of a parent the presumption seems to be that the motive of the parent in acting on the complaint of the wife is good, and unless a bad motive is shown the parent will not be liable for sheltering her, or advising her to leave her husband.[17]

Declarations of the wife made to a third person, but made at the time of leaving and not properly part of the *res gestæ*, concerning unhappy relations between herself and her husband are not ordinarily admissible in evidence, especially if made while under the influence of a paramour.[18] Proof of such unhappy relations may, however, be made and considered in mitigation of damages, but not in justification or palliation of the defendants' conduct.[19] For this purpose letters and statements made by the wife may often be shown..[20] The theory upon which such evidence is admitted is that the loss and injury to the husband cannot be so great where the relations between himself and his wife were already unfriendly and unhappy.

W. F. ELLIOTT.

[4] Schouler on Husb., and Wife, § 66, citing Van Arnam v. Ayers, 67 Barb. 544.

[5] 1 Addison on Torts, § 51.

[6] 2 Cooley's Blk. Comm. Bk. 3, p. 142.

[7] *Id.* 142, 143.

[8] 9 Wash. Law Rep., 513, 530.

[9] Cooley on Torts, 228, note.

[10] Lynch v. Knight. 9 H. L. Cas. 577.

[11] Breiman v. Paasch, 7 Abb. N. C. 249; Foot v. Card (Conn.), 18 Atl. Rep. 1027; Bennett v. Bennett (N. Y.), 28 N. E. Rep. 17; Bassett v. Bassett, 20 Ill. App. 543.

[12] Westlake v. Westlake, 8 Cent. L. J. 477; 34 Ohio 621; Mehrhoff v. Mehrhoff, 26 Fed. Rep. 13; Jaynes v. Saynes, 39 Hun. 40; Baker v. Baker, 16 Abb. N. C., 298; Clark v. Harlan, 1 Cin. R. 418.

[13] Van Arnam v. Ayers, 67 Barb. 544; Logan v. Logan, 77 Ind. 558. See also Mulford v. Clewell, 21 Ohio St. 91; Wood v. Mathews, 47 Ia. 409; Calloway v. Laydon, 47 Ia. 456; Freese v. Tripp, 70 Ill. 503.

[14] Philips v. Squire, Peake, N. P. 82; Barnes v. Allen, 30 Barb. 663.

[15] Higham v. Vanosdol, 101 Ind. 160, 166.

[16] Modisett v. McPike, 74 Mo. 636. See also, Barnes v. Allen, 30 Barb. 663; White v. Ross, 47 Mich. 172; Hutcheson v. Peck, 5 Johns. 196; Berthon v. Cartwright, 2 Esp. 480.

[17] Hutcheson v. Peck, 5 Johns. 196; Bennett v. Smith, 21 Barb. 439; Cooley on Torts, 225; Bennett v. Burkhead, 21 Ark. 79.

[18] Higham v. Vanosdol, 101 Ind. 160; Wharton on Ev. § 225. Compare Palmer v. Crook, 7 Gray, 418; Aveson v. Kinnaird, 6 East, 188.

[19] Hadley v. Heywood, 121 Mass. 236, 239; Coleman v. White, 43 Ind. 429.

[20] Willis v. Bernard, 8 Bing. 376; Gilchrist v. Bale, 8 Watts, 355; Palmer v. Crook, 7 Gray, 418.

CORRESPONDENCE.

To the Editor of the Central Law Journal:

In No. 25, Vol. 30, of your CENTRAL LAW JOURNAL, you comment on the accumulation of business in the United States Supreme Court. My experience has raised several queries in my mind about this accumulation of business, of which every interested person is complaining. One of them is: Why does a suit for damages against what is termed a federal corporation, the Northern Pacific Railroad Company for instance, arise under the constitution or laws of the United States, any more than an action to recover damages for injuries to the realty consequent upon entry without right upon the land of another, the title to which had vested by act of congress? It is by virtue of federal legislation that such a corporation holds its franchise, and it is by virtue of federal legislation that most of the titles to land are held in this country. Federal legislation launches a corporation into existence to take its chances along with every other citizen of the United States, and actions against it for damages are governed by the same rules that govern a similar action against a State corporation; and the constitution and laws of the United States have no more effect upon the determination of a suit against a federal corporation than a suit against a State corporation.

Another query is: Why do these federal corporations usually remove suits against them in the State courts to the federal courts? So far as suits for damages on account of negligence of these corporations are concerned, the limitation of amount necessary to an appeal to the United States Supreme Court probably induces a great many to sue for less than $5,000, when they could recover more in a State court. Also, certain decisions by federal judges in cases of expulsion of passengers are more favorable to railroad companies than decisions of State courts in similiar cases. These considerations may account in some degree for the desire of these corporations to remove such causes from the State courts to the federal courts; but I am not satisfied with any reason yet given why the federal courts should assert such jurisdiction. Compare Hall v. Memphis, etc. R. Co., 15 Fed. Rep. 57, and Hufford v. Grand Rapids, etc. R. Co., 64 Mich. 631.

It seems to me that but for a strained construction by which the federal courts take jurisdiction of such cases as above named, the United States Supreme Court would not be so crowded and overworked.

L. H. PRATHER.

Spokane Falls, Wash.

To the Editor of the Central Law Journal:

Will you please state in the JOURNAL or otherwise, in what States it is imperative, and in what States it is discretionary in the court to grant changes of venue in civil cases upon the filing of a proper affidavit.

A. C. L.

Richmond, Ind.

[Will some one undertake to answer this? —ED.]

To the Editor of the Central Law Journal:

Local courts seem to be mixing matters a little on the "original package" law. Some seem to be holding that beer imported by the case may be sold by the bottle without license. This is not law in this State, as will be readily seen by referring to State v. Tracy & Wahrendorf, 3 Mo. 3; State v. Shapleigh, 27 Mo, 344. Perhaps if you will call attention to these decisions it will interest the profession at this time.

H. F. MILLAN.

Kirksville, Mo.

RECENT PUBLICATIONS.

THE TRIAL OF JESUS, from a Lawyer's view. By C. H Blackburn, Cincinnati. Robert Clarke & Co. 1890.

A brochure of seventy pages designed to prove the illegality of the trial of Jesus. It conclusively proves that which needs no proof, for the world knows that the pretended trial was without the semblance of legality, a mockery of law and a travesty on justice. Indeed there seems no room for argument to controvert Mr. Blackburn's conclusions from a legal standpoint, but the book contains some ideas of interest to the theological student. Indeed it would seem that theology was as largely in the author's mind at the outset as law, judging from his preface.

The author has gone carefully over the subject of the Jewish criminal law, and shown the extent to which Rome reserved to herself the supervision and control of the same, and has presented many facts in relation thereto that will be found new to many of the legal profession, and of interest to all. He has shown also that in this trial the Jews flagrantly violated their own laws as well as every principle of right and justice. Indeed, it is a mockery of law to call it a trial at all. It was simply the ravings of a fanatical religious mob. Religion, or what the world calls religion, seems to be the thing best suited to arouse and put into execution the blackest deeds that humanity is capable of. Intelligent Jews of the present day admit the flagrant violations of law and justice exercised by his accusers, and indeed an eminent Rabbi in this county has recently stated that the Jews as a people were not guilty of his death, that a large majority of the Jews were in accord with Christ's principles and teachings and that his unjust condemnation was attributable to a few fanatical priests. Be that as it may, there seemed none or not enough ready to lend a helping hand to stay the wild fury of the mob. The guilt of the priestly instigators of the crime seems to sink into insignificance when compared with that of Pontius Pilate, the Roman procurator who held in his hands the power to thwart Christ's accusers. In Pilate's hands rested the power of life and death. As an unbeliever in the religion of the fanatical priests he was well qualified to administer impartial justice. Well he knew there was not a particle of truth in the charges preferred. But one charge was made against Jesus that could rightfully claim from Pilate the slightest attention, viz: that Jesus had announed himself as a king. This was an accusation well calculated to arouse the ire of Pilate for he recognized no king in Jerusalem but Cæsar. But the sublime reply of Jesus must have set at rest in his mind even that accusation. Mr. Blackburn has proven one thing of interest to lawyers and to the world, that the power of life and death should never be placed in the hands of one man, that our system of jury trial is the nearest to perfection that the world has yet seen. Some may answer that this was an exceptional case, that the crucifixion of Christ was a necessity ordained from all eternity. To the legal mind this must seem an absurdity. Christ himself fore-knew his fate, but that his death was a necessity excepting as a means of

proving his power over death is an absurdity, for even that power met with abundant and as effective proof in his raising of Lazarus from the dead. That justice should demand the death of the purest man the world has yet seen for the benefit of sinners is too revolting.

S.

THE AMERICAN DIGEST. Annual, 1889. Being Vol. 3 of the United States Digest Third Series Annuals. A Digest of all the Decisions of the United States Supreme Court, all the United States Circuit and District Courts, the Courts of Last Resort of all the States and Territories, and the Intermediate Courts of New York State, as Reported in the National Reporter System and elsewhere during the year 1889. With a Table of Cases Digested, and a Table of Cases Overruled Criticised, Followed, Distinguished, etc., during the year. Reference to the State Reports given by an Improved Method of Topical Citation. Prepared and Edited By the Editorial Staff of the National Reporter System. St. Paul. Minn.: West Publishing Co., 1890.

The value of this digest to the practitioner can be readily understood upon even a cursory examination. It contains nearly 4,500 large pages, and gives the substance of every opinion filed by the courts of last resort during the year 1889, and has the additional advantage of references to the volume and page of the State reporter as well as of the West Publishing Company's series, where the full opinion may be found. It also contains a table of cases overruled, criticised, and distinguished. In point of arrangement and substance it is in every respect complete and accurate.

POETRY OF THE LAW.

CRIMINAL LAW — MAYHEM. — (STATE V. GIRKIN. — 1 Ired. L. 121.)

It was the time when roses blow
And warbling songsters first appear,
That Girkin did for Watson go—
Like Anson for a colt that's slow—
And took a mouthful of his ear.

Now damaging a person thus,
Is known as mayhem in the books;
And made a crime in all of us,
Who in a little friendly fuss
Despoil our adversaries looks.

So Girkin made as his defense
First; he had no *mayheming will.*
Second; he'd put in evidence,
That not enough of ear "went hence"
To fill the statutory bill.

Which says disfiguring is the test,
But to these points the judge replied—
"That what one does it is confessed
One means to do. And for the rest
No court on earth would e'er decide.

That one must part, to prove this case,
In toto with his ear; or pay
Over his nose entire; or chase
Life shadows destitute of face;
Or fall in Jack the Ripper's way.

And although witness Watson wore
Enough ear still to loudly ring
At what respondent Girkin swore;
Enough of it had 'gone before'
To make out a disfiguring."

D. L. CADY.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

---

1. ACTION—Venue.—Except in cases where jurisdiction is acquired by reason of the subject-matter of the suit, an action must be brought against a defendant in the county in which he or some of the defendants reside or may be summoned.—*Cobbey v. Wright*, Neb., 45 N. W. Rep. 460.

2. ADMINISTRATION — Widow's Allowance. — In an action by a widow against the administrator of her husband's estate to recover her distributive share, it is not necessary that she should aver that she did not desert her husband, and was not living in adultery at the time of his death.—*Sherwood v. Thomasson*, Ind., 24 N. E. Rep. 334.

3. ADMINISTRATOR—Bond.—The fact that the sole heir is appointed one of the administrators of the estate, and executes a joint and several bond with his co-administrator for the faithful discharge of their duties, does not prevent him from recovering from the sureties on the bond for a *devastavit* committed by his co-administrator.—*Nanz v. Oakley*, N. Y., 24 N. E. Rep. 306.

4. ADMINISTRATORS— Opening. — Under Code Iowa, § 2475, where heirs and representiatives apply within three months, and allege that no report was filed until over two years from the appointment, that it was then filed and approved without notice to them, they make out a case for relief.—*Van Akin v. Welch*, Iowa, 45 N. W. Rep. 406.

5. ADMIRALTY—Collision.—Under 53 U. St. at Large, 441, which provides that, "if two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other," when a collision occurs under such circumstance; the vessel whose duty it is to keep out of the way should be held in fault, unless clear and undisputable evidence establishes the contrary.—*Meyers Excursion & Navigation Co., v, Emma Kate Ross*, U. S. D. C. (N. J.), 41 Fed. Rep. 826.

6. ADMIRALTY— Maritime Liens — Delivery. — Unconditional delivery of cargo destroys the carrier's lien for freight and demurrage.—*Egan v. A Cargo of Spruce Lath*, U. S. D. C. (N. Y.), 41 Fed. Rep. 830.

7. ADVERSE POSSESSION.—Where the evidence shows that a tenant of one C who has been in possession of the land, and under whom plaintiff claims by adverse possession, moved off the land, and a stranger took possession and occupied it for several weeks, the possession of C and his vendors and tenants, cannot help plaintiff, and he cannot connect their possession with the possession of himself and his immediate vendor.—*Warren v. Fredericks*, Tex., 13 S. W. Rep. 643.

8. ADVERSE POSSESSION. — Where a conveyance o ands was not acknowledged, and the grantor, havin

remained in possession for several years, executed a new deed, in proper form, to another, and gave him possession, he held adversely to the title of the first grantee.—*Smith v. City of Osage*, Iowa, 45 N. W. Rep. 404.

9. APPEAL—Record.—Where the abstract concludes with certificates of the short-hand reporter and the trial judge to the transcript of the notes of evidence, but it is nowhere stated in the abstract that it contains the evidence in the case, while the only objections made to the ruling of the court below refer to the sufficiency or admissibility of evidence, the judgment will be affirmed.—*Bailey v. Green*, Iowa, 45 N. W. Rep. 395.

10. ASSAULT AND BATTERY—Evidence.—In an action for assault and battery, evidence as to the quarrelsome character of plaintiff is inadmissible, unless such fact was known to defendant before the assault.—*People v. Jury*, Mich., 45 N. W. Rep. 368.

11. ATTORNEY AND CLIENT.—Facts upon which court held attorney had not acted in bad faith with his client in reference to forclosure of certain mortgage and therefor refused to hold him as trustee for the client.—*Rogers v. Gaston*, Minn., 45 N. W. Rep. 427.

12. BETTERMENTS—Possession under Color of Title.—Under Code Iowa, § 1976, an occupying claimant, who is in possession under color of title by adverse possession, cannot recover for improvements made, before he acquired color of title by such adverse possession.—*Snell v. Mechan*, Iowa, 45 N. W. Rep. 398.

13. CARRIERS OF PASSENGERS—Negligence.—Carriers of passengers are bound to use the best precautions in known practical use to secure the safety of their passengers; and this is the measure of their duty whether they carry them on freight or mixed trains, or on exclusively passengers trains.—*Oviatt v. Dakota Cent. Ry. Co.*, Minn., 45 N. W. 436.

14. CARRIERS OF PASSENGERS—Negligence.—The fact that a railroad company has a rule prohibiting passengers being in its baggage-cars does not absolve it from the duty of care towards passengers who are in a baggage-car, if it habitually disregards the rule, and permits passengers to ride in such cars.—*Jones v. Chicago, St. P. M. & O. Ry. Co.*, Minn., 45 N. W. Rep. 444.

15. CARRIERS OF PASSENGERS—Negligence.—Question as to defective appliances and due care on part of company in the matter of inspection.—*Palmer v. President, etc*, N. Y. 24 N. E. Rep. 302.

16. CARRIERS OF PASSENGERS—Negligence.—When a street railway company stops its car over an excavation made by the city, to allow passengers to alight, and neither warns them of the danger nor assists them to alight, it is liable for injuries sustained by a passenger who steps off the car into the excavation.—*Richmond City Ry. Co., v. Scott*, Va., 11 S. E. Rep. 404.

17. CHATTEL MORTGAGES—Description.—One J N P gave a chattel mortgage to the plaintiffs, March 3, 1887, on "one white cow, three years old," and subsequently, on August 21st following, gave defendant a like mortgage on "one three-year old white cow, named Flower," which the defendant took into possession and disposed of. The plaintiff brought replevin, and the property was not found. It was stipulated that there was but one white cow in the transaction: *Held*, that, under section 198 of the Civil Code, the plaintiff is entitled to recover the value of the property.—*Lininger v. Mills*, Neb., 45 N. W. Rep. 463

18. CONTRACT—Time.—Provisions in a contract that time shall be of the essence thereof, and a failure to perform all its conditions within the time limited for completion shall defeat any right to recover for labor performed thereunder, and that the agreement shall not be altered except by a writing signed by both parties, are no defense to an action to recover the price of the work, where the contractor is allowed to continue the work after the day fixed for its completion.—*Dunn v. Steubing*, N. Y., 24 N. E. Rep. 315.

19. CONTRACT—Assignment.—A contract to cut and deliver saw-logs on defendants' lands was assigned to plaintiffs, with defendants' consent, after breach by the assignor. A written indorsement signed by assignor and defendants recited the breach, released all damages and made new stipulations: *Held*, the indosement was a new and binding contract, and defendants were liable for its breach.—*Rayburn v. Comstock*, Mich., 45 N. W. Rep. 382.

20. CONTRACT—Measure of Damages.—In action for the price of furniture for an hotel, when it appears that plaintiff contracted to deliver it set up in the rooms, ready for use and occupancy, on a certain date, defendant may recover, on counter-claim, damages for the loss of the use of the rooms from the date agreed on to the day of delivery. The measure of the damage is the rent of the rooms when furnished.—*Berkey & Gay Furniture Co., v. Hascall*,—Ind., 24 N. E. Rep. 336.

21. CRIMINAL EVIDENCE—Blackmail.—Under Rev. St. Ind., 1881, § 1926, which provides that any one who threatens to accuse, any person of a crime punishable by law, etc., when the letter containing the threats is ambiguous, the ambiguity may be explained by parol evidence.—*Motsinger v. State*, Ind., 24 N. E. Rep. 342.

22. CRIMINAL EVIDENCE — Dying Declarations.—A remark by deceased that it was hard to be murdered on his own farm is not admissible as a dying declaration since it states no facts or circumstances in regard to the killing, and its admission is error.—*State v. Perigo* Iowa, 45 N. W. Rep. 399.

23. CRIMINAL LAW—Burglary.—Under an indictment charging a burglary by force, threats, and fraud, an instruction as to an entry effected by each of such means is reversible error where the evidence conclusively shows that it was accomplished by the use of force alone.—*Miller v. State*, Tex., 13 S. W. Rep. 646.

24. CRIMINAL LAW—Perjury.—On indictment for perjury, it is sufficient to allege that the false statement on which perjury is assigned was material without alleging the facts which show materiality.—*Sisk v. State*, 13 S. W. Rep. 647.

25. CRIMINAL LAW — Homicide.—The definition of "malice aforethought" is essential to the charge in a murder case, and its omission is not cured by the presence of definitions of express malice and implied malice.—*Childers v. State*, Tex., 13 S. W. Rep. 650.

26. CRIMINAL LAW—Manslaughter.—Facts upon which court held conviction for manslaughter proper.—*State v. Sterrett*, Iowa, 45 N. W. Rep. 401.

27 CRIMINAL LAW—Witness.—Where one of two persons, charged with the same offense, testifies on the investigation before the grand jury without claiming his constitutional privilege, and both of them are indicted, he cannot on the trial of his co-defendant refuse to testify, on the ground that his testimony will criminate himself.—*State v. Van Winkler*, Iowa, 45 N. W Rep. 388.

28. CRIMINAL PRACTICE — False Pretenses.—Where property is acquired in one county by means of false and fraudulent representations made in another county the venue of the offense must be laid in the county in which the property was delivered.—*Sims v. State*, Tex. 13 S. W. 653.

29. CRIMINAL PRACTICE—New Trial.—On appeal from a conviction of murder in the first degree, the record showed that the refusal of the court to grant defendant a continuance to secure absent witnesses, which was assigned as error, was correct under the facts as they then existed. After such ruling it appears that the depositions of these witnesses were deposited in the mail, but did not arrive, and that the facts therein deposed were such that, if they were true, defendant could not have commited the crime of which he was convicted: *Held*, that a new trial should have been granted.—*State v. Foster*, Iowa, 45 N. W. Rep. 385.

30. CRIMINAL PRACTICE—Presence of Accused.—It is not error to hear arguments, in the absence of the accused, on motions and demurrers, before the commencement of the trial.—*Miller v. State*, Neb., 45 N. W. Rep. 451.

31. DEDICATION — Evidence. — A railroad company offered a strip of its land to be used as a street by a city in exchange for the vacation of an alley between two of the company's lots. The city council ordered the vacation of the alley on the payment of its value by the company, but said nothing about the strip offered in exchange. The company paid the price fixed for the alley, and graded the strip, and used it as an approach to its depot: *Held*, that the strip did not become a public street.—*Pennsylcania Co. v. Plotz*, Ind., 24 N. E. Rep. 343.

32. DEED— Construction. — M conveyed land to his wife "and her children and joint heirs with her and myself and" two children of his by a former marriage: *Held*, that the words "joint heirs with her and myself" are intended to show what children of the wife take after her, and the conveyance passes to her, and to each of the children by M's former marriage, a one-third interest in fee-simple.—*Broliar v. Marquis*, Iowa, 45 N. W. Rep. 395.

33. DEED—Right of Way — A deed of lot 3 from the owner of lots 3 and 4, which grants "a right of way from Clinton street across the rear of said lot 4 to the rear end of lot 3, to be used in common with the owners of said lot 4 and with the said parties of the first part, and their heirs and assigns," gives an easement appurtenant to lot 3, and not in gross to the grantee.—*Reise v. Enos* Wis., 45 N. W. Rep. 414.

34. DIVORCE—Desertion.—Facts upon which held that a divorce on ground of desertion was properly refused, —*Wright v. Wright*, Mich., 45 N. W. Rep. 365.

35. DRAINAGE—Assesments.—Under the Indiana drainage act of 1883 (Elliott's Supp. § 1189), creating a lien on the confirmation by the court of the assessment as made in the report of the drainage commissioner, it is not necessary to the maintenance of an action to collect drainage assessments that the percentage of assesments made by the commissioner having the work in charge should have been reported to and confirmed by the court.—*Louisville N. A. & C. Ry. Co. v. State*, Ind., 24 N. E. Rep. 350.

36. DRAINAGE— Assessment. — In action to enforce assessment for drainage, the court has jurisdiction to adjudicate upon the merits of the controversy and may reform an erroneous description of the land in the original petition. —*State v. Smith*, Ind., 24 N. E. Rep. 331.

37. ELECTION OF ACTION—Conversion.—The owner of goods wrongfully taken, which still remain in the wrong-doers' possession, may waive the tort, and sue on an implied contract of sale, in which event title to the goods passes to the wrong-doers.—*Terry v. Munger*, N. Y., 24 N. Rep. 272.

38. EQUITY—Quieting Title.—Where a plaintiff in ejectment claims title through a deed and a patent valid on their face, but in fact void, the deed being forbidden by statute, and the patent being subsequent to another patent for the same land, a court of equity has jurisdiction of a bill to enjoin the prosecution of the action of ejectment, to cancel such deed and patent, and to compel discovery.—*Smythe v. Henry*, U. S. C. C. (N. Car.). 41 Fed. Rep. 705.

39. ESTOPPEL IN PAIS — Boundary Line. — A landowner who in good faith points out to the owner of adjoining land an incorrect division line, both parties being ignorant of the true line, is not estopped from denying that such line is the true boundary.—*Cheeney v. Nebraska & C. Stone Co.*, U. S. C. C. (Col.), 41 Fed. Rep. 740.

40. EXECUTION—Stock of Club.—The shares of capital stock of a club formed under How. St. Mich. c. 188, are not subject to levy and sale under section 7697, which provides that "any share or interest of a stockholder in any bank, insurance company, or any other joint-book company, that is or may be incorporated under the authority of any law of this State, may be taken in execution in and sold in the following manner." —*Lyon v. Denison*, Mich., 45 N. W. Rep. 358.

41. EXEMPTION — Conversion. — A judgment for the wrongful conversion of property exempt from execution sale under Rev. St. Wis. § 2992, is itself exempt, and cannot be subjected to an execution against the judgment creditor under section 3028.—*Below v. Robbins*, Wis., 45 N. W. Rep. 416.

42. FALSE IMPRISONMENT—Void Warrant.—In an action for false imprisonment it appears that the complaint and warrant under which the arrest was made stated that plaintiff had stolen a promissory note, but did not allege it to be of any value: *Held*, that, as under Rev. St. Wis. 1878, § 4415, the punishment for larceny depends on the value of the article, the complaint and warrant were absolutely void on their face, and furnished no justification for the arrest.— *Frazier v. Turner*, Wis., 45 N. W. Rep. 411.

43. FALSE REPRESENTATIONS—Partners.—Where land is given in exchange for other land by one partner for the firm, the other partner is bound by his representations as to such land though he did not know that they were made.—*Stanhope v. Swafford*, Iowa, 45 N. W. Rep. 403.

44. FRAUDS—Statute of—Parol Compromise.—A parol agreement to compromise a claim to land cannot be avoided, as within the statute of frauds, where, in pursuance thereof, defendant has conveyed to a trustee who has quieted title as against third persons, and executed a note and mortgage to plaintiff for his interest, and then conveyed to defendant subject to the mortgage.—*Hatfield v. Miller*, Ind., 24 N. E. Rep. 330.

45. FRAUDULENT CONVEYANCES— Chattel Mortgage.— A chattel mortgage executed by a debtor to his wife to secure a *bona fide* indebtedness is valid as against his other creditors, and it is immaterial that the statute of limitations has run against a portion of the debt thus preferred.—*Manchester v. Tibbitts*, N. Y., 24 N. E. Rep. 304.

46. GARNISHMENT—Exemption.— A railroad company garnished in another State for a debt owing by one of its brakeman residing in Tennessee is under no obligation to claim for him the benefit of Mill. & V. Code Tenn. § 2931, which exempts $30 of the wages of every laboring man from seizure by garnishment or otherwise.—*Carson Memphis & C. R. Co.*, Tenn., 13 S. W. Rep. 588.

47. GARNISHMENT—Judgment by Default. — If a garnishee suffers judgment to go against him upon default of his appearance, his remedy must be taken in the same proceeding. — *Segog v. Engler*, Minn., 45 N. W. Rep. 427.

48. INSURANCE—Representation,—Where an insurance agent, who, on making out an application, had been told by the assured of a mortgage on the property made out two years thereafter a new application to a different company without asking any questions of the insured, and stated therein that there was no incumbrance, he acted as the agent of the company, and the misrepresentation did not avoid the contract.—*Russell v. Detroit Fire Ins. Co.*, Mich., 45 N. W. Rep. 356.

49. INSURANCE COMPANIES — Policy. — Bright. Purd. Dig. Pa. 1885, p. 918, which forbids, under a penalty, any foreign insurance company to do business in that State unless it has a certain amount of capital stock, and has obtained from the insurance commissioner a certificate that it has complied with certain requirements, does not render void a policy issued in violation thereof.— *Pennypacker v. Capital Ins. Co.*, Iowa., 45 N. W. Rep. 408.

50. INTEREST—Uuliquidated Claim. — Where a claim for services is unliquidated, and the right to recover anything is contested, interest is not set running until a demand is made in the shape of an account, showing the balance claimed.—*De Carricarte v. Blanco*, N. Y. 24 N. E. Rep. 284.

51. INTOXICATING LIQUORS. — Though for keeping open one saloon there could be but one offense on one day, bar-tenders, who were present and selling, under the direction of the proprietor, were equally guilty with the latter, and his conviction and punishment were no bar to their conviction. It is immaterial who

opened the door.—*People v. Ackerman*, Mich., 24 N. E. Rep. 367.

52. INTOXICATING LIQUORS—License.—On the hearing of a remonstrance against granting a liquor license which denies any jurisdictional matter, as that certain named petitioners are resident freeholders, or that the petition is signed by a majority of the freeholders of the ward, where the petition has less than 30 signatures, the burden is upon the applicant to prove these jurisdictional facts.—*Lambert v. Stevens*, Neb., 45 N. W. Rep. 457.

53. INTOXICATING LIQUORS — License Fee. — Money received for liquors license issued by a county board belongs exclusively to the support of the common schools of the county in which the license was issued, and not to the school-district in which the liquors are sold.—*State v. Fenton*, Neb., 45 N. W. Rep. 464.

54. INTOXICATING LIQUORS—Ordinance.—By ordinance the city of Clinton provided that "all saloons of every description," should be kept closed after 11 o'clock at night. Subsequently, by Code Iowa, § 1523, the sale of intoxicating liquors was prohibited throughout the State: *Held*, that although the ordinance was thereafter void so far as it regulated places for the sale of liquor, yet, under section 482, it was still valid as to a place "commonly known as a saloon," and one who kept open such a place after 11 o'clock was legally convicted thereunder. — *City of Clinton v. Grusendorf*, Iowa, 45 N. W. Rep. 407.

55. JUDGMENT—Cancellation.—An order cancelling a judgment under Code Civil Proc. N. Y. § 2182, because of the debtor's discharge in insolvency without notice to the judgment creditor, is irregular; and, to entitle the latter to have the order vacated, it is enough for him to show that he had no notice of the application to cancel the judgment, without giving any reason why the general discharge of the debtor from his debts did not operate upon him, or stating any facts showing that the judgment should not be canceled, until he was served with notice of the application for that purpose.—*Wheeler v. Emmeluth*, N. Y., 24 N. E. Rep. 285.

56. JUDGMENT— Correction. — A court may, at any time after final judgment (at least while it remains unexecuted), correct its own clerical mistakes, so as to make the findings and judgment conform to what it intended they should be.—*McClure v. Bruck*, Minn., 45 N. W. Rep. 438.

57. JUSTICE OF THE PEACE — Plea in Abatement. — Under How. St. Mich. § 6822, a plea to the jurisdiction, which specifically states that the justice before whom the cause is to be tried is an interested party, and an attorney in a pending replevin suit involving the title to the property for the fraudulent concealment of which defendant was arrested, is sufficient.—*Clark v. Mikesell*, Mich., 45 N. W. Rep. 377.

58. LIFE INSURANCE AGENTS—Commissions. — A life insurance company employed an agent for one year, and agreed to pay him a certain amount monthly, and "regular renewal commissions" on the policies obtained by him, when the premiums should be paid to the company: *Held*, that the termination of the contract by mutual agreement did not take away the agent's right to renewal commissions on the premiums paid on policies obtained by him during his term of service.—*Hale v. Brooklyn Life Ins. Co.*, N. Y., 24 N. E. Rep. 317.

59. LIMITATIONS OF ACTIONS.—The statute of limitation for the redemption of land sold for taxes does not run against a landlord in favor of one who, after acquiring a tax-deed, fraudulently induces the tenant to give him possession, since the possession thus acquired remains in the landlord under Rev. St. § 4216, which makes the possession of the tenant the possession of his landlord.— *Pulford v. Whicher*, Wis., 45 N. W. Rep. 418.

60. LIMITATION OF ACTION—Death.—For injuries resulting in the death of a minor a right of action accrues to his administrator at the time of his death, and the statute of limitations begins to run, unaffected by Code Iowa, § 2535.—*Murphy v. Chicago, M. & St. P. R. Co.*, Iowa, 45 N. W. Rep. 392.

61. LIMITATIONS OF ACTIONS—Mutual Accounts. — An account showing on one side items for goods sold and delivered at different dates, and payments made by the purchaser on the other side, is not a mutual, open, current account, within the meaning of the statute of limitations.—*Cousins v. St. Paul, M. & M. Ry. Co.*, Minn., 45 N. W. Rep. 429.

62. LIMITATIONS OF ACTIONS—Note. — The statute of limitations begins to run on a note "paid when said for" from its date.—*Kraft v. Thomas*, 24 N. E. Rep. 346.

63. LIQUOR NUISANCE—Judgment—Habeas Corpus. — The validity of a judgment sentencing defendant to imprisonment for liquor selling until his fine is paid cannot be questioned upon *habeas corpus*, on the ground that no time is fixed for the imprisonment.—*Elsner v Shirgley*, Iowa, 45 N. W. Rep. 393.

64. LOGS AND LOGGING—Contract.—Where the logs of plaintiff and defendant became intermixed, and the latter agreed in writing to drive plaintiff's logs with his own at a given price, but afterwards a new parol agreement was made, by which both were to participate in the drive, their rights are determined by the latter contract.—*McDonald v. Boeing*, Mich., 45 N. W. Rep. 362.

65 MARINE INSURANCE — Cause of Loss. — Where a stranded vessel is voluntarily scuttled to save her from a storm which began several hours after she stranded, the proximate cause of the loss arising from such scuttling is the storm, and not the stranding. — *Northwest Transp. Co. v. Boston Marine Ins. Co.*, U. S. C. C. (Mich.), 41 Fed. Rep. 793.

66 MASTER AND SERVANT—Fellow-servants.— Plaintiff was employed by a firm of stevedores who had a contract to load a vessel from the dock of defendant. Defendant furnished the hoisting apparatus, with a person to manage the same. Owing to the negligence of such person in raising a barrel from the dock without warning, plaintiff was injured: *Held*, that such person was not a fellow-servant with plaintiff.—*Sanford v. Standard Oil Co.*, N. Y., 24 N. E. Rep. 313.

67. MEASURE OF DAMAGES—Negligence.—In an action for personal injuries, probable future disability to earn money is an element of damages proper to be considered; and it is not error to permit the plaintiff, who was injured while acting as an engineer, to testify that he was not a skillful engineer but intended to become one, and to follow the business as a permanent occupation.—*Howard Oil Co., v. Davis*, Tex., 13 S. W. Rep. 665,

68. MECHANIC'S LIEN.—Under Elliott's Supp. Ind. §§ 1699-1704, which gives a lien to subcontractors, the lien is only for the reasonable value of the work and material, and not for their price as fixed by the contract with the principal contractor.—*Morris v. Louisville, N. A. & C. R. Co.*, Ind., 24 N. E. Rep. 335.

69. MECHANIC'S LIEN. — In an action to enforce a mechanic's lien against the real estate of a married woman, her husband is properly joined as a party defendant, in order to answer to any interest or right of redemption he may claim in the land.—*Scott v. Goldinhorst*, Ind., 24 N. E. Rep. 333.

70. MORTGAGE.—A second mortgagee, though he has foreclosed under the power of sale, he having become the purchaser, may notwithstanding the time to redeem has not expired, bring an action to have a prior mortgage adjudged paid.— *Redin v. Branhan*, Minn., 45 N. W. Rep. 445.

71. MORTGAGE—Foreclosure.—Where, on a foreclosure sale, the mortgagee purchased the premises, and the mortgagors, being parties, do not appeal from the judgment and the proceedings thereunder, they are estopped, after six years, from questioning the regularity of the proceedings.—*French v. Powers*, N. Y., 24 N. E. Rep. 296.

72. MORTGAGE—Priorities. — Where a purchaser of land, at the time he receives the conveyance, executes a mortgage to a third person, who advances the purchase money for him, such mortgage is entitled to the

same preference over a prior judgment as it would have had if it had been executed to the vendor himself. —*State v. Foster*, Iowa, 45 N. W. Rep. 385.

73. MUNICIPAL CORPORATION—Excavations in Streets. A municipal corporation, upon whom its charter imposes the duty to keep its streets in a reasonably safe condition for travel, is liable to persons for injuries caused by neglect to keep proper lights and guards at night around an excavation which it has authorized to be made in the street, although it has provided in its contract for such precautions with the contractor.—*McAllister v. City of Albany*, Oreg., 23 Pac. Rep. 845.

74. NEGOTIABLE INSTRUMENT — Attorney's Fee. — An unconditional promise in a note to pay attorney's fees is valid.—*Harvey v. Baldwin*, Ind., 24 N. E. Rep. 347.

75. NEGOTIABLE INSTRUMENT—Bills of Exchange.—A promise in writing to accept a bill of exchange, made within a reasonable time before it is drawn, will amount to an acceptance of the bill in favor of a person to whom the premise is communicated, and who also takes the bill for a valuable considération, on the faith and credit of the promise.—*Woodard v. Griffiths-Marshall Grain Commission Co.*, Minn., 45 N. W. Rep. 433.

76. NEGOTIABLE INSTRUMENT—Indorser. — Under Rev. St. Ind. 1881, § 5504, which provides that an assignee of a note, having used due diligence, shall have his action against his immediate indorser, the indorser is not discharged by the failure of the assignee, before maturity, to restrain the maker from wasting the property mortgaged to secure it. — *Brown v. Nichols, Shepard & Co.*, Ind., 24 N. E. Rep. 339.

77. NUISANCE—Abatement.—Injunction. — *Held*, that there was sufficient evidence of malice to warrant a decree for removal of a nuisance in the shape of a fence abstructing plaintiff's light and air, and for a perpetual injunction.—*Flaherty v. Moran*, Mich., 45 N. W. Rep. 381.

78. PAYMENT—Application.—After acquiescing in the application of a payment in extinguishing one demand and accepting the benefit of it for that purpose, a debtor cannot avail himself of the same fund to extinguish another demand, although when he made the payment he directed its application on the latter.—*Flarsheim v. Brestrup*, Minn., 45 N. W. Rep. 438.

79. PAYMENT—Physician.—A receipt "in full for medical services," given by a physician to the patient's mother, at whose request the services were rendered, and who was recognized by the physician as acting in the patient's behalf in making payment, is *prima facie* a satisfaction of the claim against the patient, though the latter did not authorize the payment. — *Danziger v. Hoyt*, N. Y., 24 N. E. Rep. 294.

80. PLEADING—Attachment.—An allgation that plaintiff is the owner of the property is sufficient, in an action for the trial of title to personal property seized under attachment, under Rev. St. Ind. 1881, § 1529. — *Maus v. Bome*, Ind., 24 N. E. Rep. 345.

81. PRACTICE—Publication of Summons.— Under Rev. St. Ind. 1881, § 378, amended by Act 1885, (Elliott, Supp. § 16), as to service of process by publication, it is sufficient if the publication is in three successive issues of the newspapers, and three full weeks elapse before the thirty days begin to run. — *Security Co. v. Arbuckle*, Ind., 24 N. E. Rep. 330.

82. PRINCIPAL AND AGENT.— Defendant purchased an organ of plaintiff's agent, giving a chattel mortgage for the price, and afterwards the agent collected the money, and defaulted: *Held*, under the facts that the agent had authority to make the collection and discharge the mortgage. — *Estey v. Snyder*, Wis., 45 N. W. Rep. 415.

83. PRINCIPAL AND AGENT. — The rule of law that a principal is not bound by the acts of an agent which were not authorized, and which the other party was not justified in believing to have been authorized, applied in the case of the purchase of goods on the credit of the principal.—*Eckhart v. Roehm*, Minn., 45 N. W. Rep. 443.

84. RAILROAD COMPANY.—Debts incurred by a railroad company for construction of new road within six months before the company's insolvency and the appointment of a receiver, are entitled to priority in payment out of the net earnings of the road while in the hands of the receiver, over mortgages executed when the road was unfinished, and which show that it was contemplated that the road should be completed, and which attach to the new road as fast as finished.—*McIlhenny v. Binz*, Tex., 13 S. W. Rep. 655.

85. RAILROAD COMPANY — Depot Grounds. — Under Laws Iowa, 1884, ch. 190, § 1, railroad commissioners have authority to grant a certificate for the condemnation of land for depot purposes at a place where the railroad company has no depot, and owns no land other than the right of way on which its road is built.—*Jager v. Dey*, Iowa, 45 N. W. Rep. 391.

86. RAILROAD COMPANY— Negligence. — While, in the case of its turn-tables and trucks standing on its tracks, by playing with which children are injured, it is competent for a railroad company, in order to show that it exercised due care, to prove that it secured the turn-tables and trucks in the way customary with all railroad companies, such proof is not conclusive that due care was exercised.— *O'Malley v. St. Paul, etc. Ry. Co.*, 45 N. W. Rep. 441.

87. REAL ESTATE AGENTS — Commissions.—Where a land owner agrees with an agent to pay him a specified gross sum if he will produce a purchaser of a lot of land at a stipulated price, the agent cannot recover the sum agreed on as his commission without producing a purchaser able, ready, and willing to pay such price.—*Cullen v. Bell*, Minn., 45 N. W. Rep. 428.

88. RELIGIOUS SOCIETY — Quo Warranto. — The disposition of this case upon the facts illustrates the reluctance of equity courts to interfere with internal affairs of religious societies where no property right is involved.—*People v. Nappa*, Mich., 45 N. W. Rep. 355.

89. RES ADJUDICATA—Bastardy.—In a prosecution, for bastardy, defendant set up former proceeding, in which a dismissal was entered on the admission by relatrix that he had made satisfactory provision for the child: *Held*, that the State could show that such judgment was a nullity; that the proceeding in which it was rendered was instituted and prosecuted as well as defended by defendant, without the knowledge of the prosecuting attorney. — *Gresley v. State*, Ind., 24 N. E. Rep. 332.

90. SALE—Construction of Contract. — A contract for the sale of goods which calls "for shipment within thirty days by steam or sail" does not require a clearance of the vessel within the period allowed for shipment, when the goods sold do not constitute a full cargo, and is complied with if, within the specified time, the goods are put on board a vessel bound for the intended port.—*Ledon v. Havemeyer*, N. Y., 24 N. E. Rep. 297.

91. SALE — Warranty. — A harvesting machine sold under a warranty which provided that, "if it could not be made to work well, it would be taken back, if returned immediately to the agent of whom purchased:" *Held*, that after the purchaser had used the machine a part of two harvests, he could not rescind the contract. *Clark v. William Deering & Co.*, Neb., 45 N. W. Rep. 456.

92. SALE—Warranty. — When a boiler has been sold with an express warranty to a firm composed of two members, and one of them has subsequently conveyed all his interest in the firm property to the other, that other may sue for breach of the warranty in his own name.—*Sinker v. Kidder*, Ind., 24 N. E. Rep. 341.

93. SCHOOLS—Bond.—Under Elliott's Supp. Ind. § 1298, superintendents elected after the passage of such act must file such bond within thirty days after their election.— *Commissioners of Knox County v. Johnson*, Ind., 24 N. E. Rep. 148.

94. SCHOOL-DISTRICTS—Certiorari. — The action of the county board in forming school-districts is legislative, and not judicial, and cannot be reviewed on *certiorari*.—

Moode v. Board of County Com'rs, Minn., 45 N. W. Rep. 435.

95. SCHOOL FUND — Mortgage. — When a county has loaned out part of its school fund on a mortgage, and, on default of the mortgagor, paid the interest, and at the foreclosure sale of the mortgaged premises the property was bid into the account of the school fund, and, at a subsequent sale, more than enough was realized to pay the principal and interest, the county is entitled to be reimbursed for the interest paid. — *Board of County Com'rs v. State*, Ind., 24 N. E. Rep. 347.

96. STATUTES—Public Holidays.— April 30, 1889, known as "Centennial Day," and by proclamation of the governor April 19 1889, specially set apart and recommended as a day of general "thanksgiving" was a legal holiday within the meaning of statutes. — *People v. Ackerman*, Mich.. 45 N. W. Rep. 367.

97. SUNDAY—Computation of Time.—Under Code Civil Proc. N. Y. § 1454, providing that "a creditor who might have redeemed within fifteen months after the sale, may redeem from any other redeeming creditor although the fifteen months have elapsed, provided that he thus redeems within twenty four hours after the last previous redemption," Sunday is to be excluded from the computation when the last redemption occurred on Saturday.—*Porter v. Pierce*, N. Y., 24 N. E. Rep. 281.

98. TAXATION—Assessment.—On a suit to restrain the collection of taxes because of unequal assessments a complaint which did not aver that such objection and offer of proof had been made was properly dismissed. —*Bratton v. Town of Johnson*, Wis., 45 N. W. Rep. 412.

99. TAXES — Tax-title. — Where land had been previously sold for taxes for five years in succession, and had been bid in for the county, and remained unredeemed two years after the publication of the act, the complete title vests absolutely in the county, and cannot be questioned on the ground of irregularities in the tax proceedings.—*Lombard v. White*, Wis., 45 N. W. Rep. 420.

100. TRIAL— Remarks of Counsel. — When counsel in their arguments to the jury make remarks which are foreign to the case, are unwarranted by the testimony, and are calculated to prejudice a party in the minds of the jurors, the attention of the court should be called to the objectionable language, and a ruling obtained. This may be done at the time the words are used, or when the jury is charged upon the law applicable to the pending issues.—*State v. Frelinghuysen*, Minn., 45 N. W. Rep. 432.

101. TRIAL — Stock Killing. — Where the evidence is *prima facie* sufficient to show that the animal was killed by defendant's negligence, it was not error to allow counsel for plaintiff, in his argument to the jury, to comment on the fact that defendant had offered no evidence as to the cause of the death, when it could have done so by its engineer.—*Van Slyke v. C. St., etc. Ry. Co.*, Iowa, 45 N. W. Rep. 396.

102. USURY — Principal and Agent. — When an agent, intrusted with entire management of his principal's business exacts, for the benefit of the principal, a bonus in excess of legal interest, which is concluded in the amount of the securities, the act of the agent must be *held* as a matter of law, to be the act of the principal.— *Lewis v. Willoughby*, Minn., 45 N. W. Rep. 439.

103. VENDOR'S LIEN—Where a vendor's lien securing a non-negotiable note was foreclosed by an assignee of the note after the same had been paid, a purchaser under the foreclosure, with notice of such payment, and of the existence of a junior lien, takes no title as against a purchaser under foreclosure by the junior lienholder, who was not a party to the first suit.— *Andrews v. Key*, Tex., 13 S. W. Rep. 640.

104. VENDOR AND VENDEE — Assumption of Debt.— Where the purchaser of a stock of goods of a partnership agreed, as a part of the consideration therefor, to assume and pay the existing firm debts of the vendors, the creditors of the firm may enforce the contract thus made for their benefit by action against such purchaser. —*Maxfield v. Schwartz*, Minn., 45 N. W. Rep. 429.

105. WATER AND WATER COURSES — Maritime Liens.— Inland lakes lying within the limits of the State are not navigable waters of the United States and suits to enforce a lien against boats or vessels thereon are not within the admiralty jurisdiction of the United States. —*Stapp v. Clyde*, Minn., 45 N. W. Rep. 430.

106. WILL—Parol Evidence.—It was proper to show by parol and other extraneous evidence that a certain debt was the debt referred to by testatrix, and that she always regarded and spoke of it as the debt of her brother George.—*Scott v. Neeves*, Wis., 45 N. W. Rep. 421.

107. WILLS—Attestation. — Where a verbal will is reduced to writing, and subscribed by two witnesses, one of whom is a legatee thereunder, and the other is his wife, the husband is not a competent, disinterested witness, within the meaning of section 5991 of the Revised Statutes, and the will is invalied.—*Vrooman v. Powers*, Ohio, 24 N. E. Rep. 267.

108. WILLS—Construction.—Testator devised land to his only child for life, then to her children, if any living at her death, in fee, and, if she died without issue, then to the heirs of his body then living: *Held*, that the fee vested in the daughter as heir, and would become vested in her issue, if any, at her death; and testator's sister and her descendants had no interest in the land. —*Waters v. Bishop*, Ind., 24 N. E. Rep. 161.

109. WILLS—Probate and Contest.—Under Rev. St. Tex. art. 1938, which provides that, when a will has been probated, its provisions shall be executed, unless annulled or suspended by order of the court probating the same, a proceeding to annul some of the provisions of a will must be commenced and conducted as a distinct proceeding after the will has been probated. — *Prather v. McClelland*, Tex., 13 S. W. Rep. 543.

110. WITNESS—Cross-examination.—In a suit for personal injuries caused by falling upon a defective sidewalk, several witnesses testified that plaintiff was intoxicated at the time, which he denied: *Held*, proper, on cross-examination, to allow the question: "Are you not habitually in the habit of getting drunk?" as tending to show that he was drunk at the time.—*McCracken v. Village of Markesan*, Wis., 45 N. W. Rep. 323.

111. WITNESS—Impeachment. — The court may in its discretion, allow a party surprised by adverse or evasive testimony from his own witness to ask him whether he had not previously stated the facts contrary to his testimony, if the circumstances justify the belief that the witness is hostile and unwilling to tell the truth.—*State v. Tall*, Minn., 45 N. W. Rep. 451.

112. WITNESS.—Self-crimination.— To entitle a person called as a witness to the privilege of silence, the court must see, from all the circumstances of the case, and the nature of the evidence which the witness is called on to give, that there is reasonable ground to apprehend that the evidence may tend to criminate him if he is compelled to answer.— *State v. Thaden*, Minn., 45 N. W. Rep. 447.

113. WITNESS—Transactions with Decedent. — Under Code Ala. § 5765, in a proceeding in the probate court by the administratrix and widow of an intestate, to declare his estate insolvent, where the heirs appear and deny the insolvency, a creditor who joins in the issue with the heirs, and denies the insolvency, but whose claim is resisted by the heirs as unjust, cannot, to establish his claim, testify as to transactions with the intestate.—*Dolan v. Dolan*, Ala., 7 South. Rep. 425.

114. WITNESS FEES. — If a witness attend upon the trial of a cause, and is not sworn, the party causing him to be present cannot recover from the adverse party the expense incurred for such witness, unless some sufficient reason exists which would legally excuse his failure to testify. It must be made to appear that his attendance was necessary at the time, bnt that by reason of some unforeseen event, or other sufficien, cause, his testimony became unnecessary.— *Pugh v. Good*, Oreg., 23 Pac. Rep. 827.